

Child Protection in Connecticut

A Guide to Resources in the Law Library

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"All light is valuable on a darken path"
DeQuincy

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**THESE GUIDES ARE PROVIDED WITH THE
UNDERSTANDING THAT THEY REPRESENT ONLY A
BEGINNING TO RESEARCH**

Contents

1 Best interest of the child	6
§ 1.1 Factors Used by the Courts	7
§ 1.2 Parental Preference	15
§ 1.3 The Psychological Parent	18
§ 1.4 Wishes of the Child	23
§ 1.5 Parental Relocation Out of State	25
§ 1.6 Parental Misconduct	27
4 Child Abuse and Neglect in Connecticut	28
§ 2.1 Duty to report child abuse	31
§ 2.2 Investigations and proceedings in child abuse or neglect cases	35
§ 2.3 Immediate removal of child	40
§ 2.4 Child witness in Connecticut	42
§ 2.5 Child abuse prevention	45
§ 2.6 Safe haven act	47
§ 2.7 False allegations of child abuse	48
§ 2.8 Child abuse and the unborn	50
§ 2.9 Adult memories of child abuse	52
3 Guardianship in Connecticut	54
3.1 Grounds for Guardianship	55
§ 3.2 Types of guardianships in Connecticut	58
§ 3.2a Guardians of the person of a minor	58
§ 3.2a.1 Parents as guardians	59
§ 3.2a.2 Temporary guardians	63
§ 3.2a.3 Standby guardians	65
§ 3.2a.4 Guardians and coguardians appointed by the courts	67
§ 3.2b Guardian of the estate of a minor	73
§ 3.2c Testamentary guardian or guardian designated by parent in event of parent's death	76
§ 3.2d Guardians of mentally retarded adults	79
§ 3.2e Guardian ad litem	82
§ 3.3 Jurisdiction of the courts over guardianship	86
§ 3.4 Rights and duties of a guardian	89
§ 3.5 Appointment of guardians	93
§ 3.6 Child's or respondent's wishes	96
§ 3.7 Termination of guardianship	98

4 Termination of Parental Rights	100
§ 4.1 Rights of parents	102
§ 4.1a Rights of parents in general	103
§ 4.1b Right to counsel	109
§ 4.1c Standard of proof	111
§ 4.1d Equal protection of the laws	113
§ 4.1e Notice and opportunity to be heard	114
§ 4.2 Termination by consent	116
§ 4.3 Grounds (nonconsensual)	119
§ 4.3a Abandonment	120
§ 4.3b Acts of parental commission or omission	123
§ 4.3c No ongoing parent-child relationship	126
§ 4.3d Neglected and Uncared for	129
§ 4.3e Failure to rehabilitate	132
§ 4.3f Parent has killed or committed an assault	134
§ 4.3g Parent convicted of sexual assault resulting in conception of the child	136
§ 4.4 Procedures in TPR	139
§ 4.4a Jurisdiction	140
§ 4.4b Petition for TPR	142
§ 4.4c Parties and Sstanding in TPR proceedings	145
§ 4.4d Notice	148
§ 4.4e TPR hearing	151
§ 4.4f Reason effort to Locate and Reunify	153
§ 4.4g Statutory factors	155
§ 4.4h Motion to open or set aside	158
§ 4.4i Appeals to Appellate Court	160
§ 4.4j Standards of Appellate review	162
Appendices	165
Appendix A Child abuse prevention and punishment	166
You asked for a description of changes in Connecticut law and agency practice over the past five years (1998 to 2002) to prevent and punish child abuse.	166
Appendix B Mandated reporter law	170
You asked for a (1) brief summary and copy of any instructions the Department of Children and Families (DCF) provides mandated reporters, (2) copy of a letter the chief state's attorney recently sent to mandated reporters, and (3) summary of Connecticut cases that discuss the interplay between the mandated reporter laws and laws on confidential communication.	170
Appendix C Remedy for wrongful child abuse allegation	177
You asked whether the General Assembly had enacted or considered legislation to provide a remedy for a person wrongfully accused of child abuse.	177
Appendix D Subsidized guardianship and State child care subsidies	178
You asked why the Department of Social Services (DSS) began to consider the income of state-subsidized guardians in determining eligibility for its child care subsidies. You also wanted to know how much DSS expected to save by this decision.	178
Appendix E Guardians of persons with mental retardation	179
You asked for information on the rights of a guardian of a person in a Department of Mental Retardation (DMR) group home, specifically in the case of an involuntary move from the group home. You also want to know if any state law prohibits a guardian from contributing money to pay for the rental of the home or for repairs to it.	179
Appendix F Grandparents' custody of grandchildren	181

You asked for an explanation of (1) Connecticut law on grandparents' custody of, and visitation with, their grandchildren and (2) *de facto* custody laws in other states. _____ 181

Appendix G Visitation for birth parent or blood relative after termination of parental rights _____ 186

You asked what the current law is concerning the rights of a birth mother or other close blood relative such as a grandparent to obtain visitation in conjunction with or after a termination of parental rights proceeding prior to an adoption. If they do not have such rights now, you asked how the rights could be granted and what kind of restrictions could be added to assure that such visitation was not granted in inappropriate cases. _____ 186

TABLES

Table 1: Criteria Used by the Courts in Determining Best Interest of the Child	11
Table 2 ALR Annotations on Factors Used by the Courts	13
Table 3 Survey of the States: Best Interest of the Child Standard.....	17
Table 4 Proof of denial of child visitation rights	20
Table 5 Proof of justification of denial of visitation rights.....	20
Table 6 Proof as to which parent should be awarded custody of child.....	21
Table 7 Commitment of Child or Youth.....	71
Table 8 Sovereign Immunity and State Officials.....	72
Table 9 Parental appointment of guardian in event of parent's death	78
Table 10 Jurisdiction of Connecticut Courts	88
Table 11 ALR annotations on rights of guardians of minors.....	91
Table 12 ALR Annotations on rights of guardians of adult incompetent.....	92
Table 13 Factors Used in Choosing a Guardian	95
Table 14 Rights of the remaining parent in TPR	106
Table 15 Foster parents and TPR	107
Table 16 Best Interest of the Child Standard in TPR	108
Table 17 Consent to TPR within 48 hours of birth or by minor.....	118
Table 18 ALR Annotations on Factors in TPR	122
Table 19 Proof of Grounds for Terminating Parental Rights	138
Table 20 Statutory Parent	144
Table 21 Who May Petition for TPR.....	147
Table 22 Statutory Factors Considered in TPR	156
Table 23 Cooperative Postadoption Agreements.....	164

Chapter 1

Best Interest of the Child Standard in Connecticut

A Guide to Resources in the Law Library

“We have consistently held in matters involving child custody that while the rights, wishes and desires of the parents must be considered it is nevertheless the ultimate welfare of the child which must control the decision of the court.” In re Appeal of Kindis, 162 Conn. 239, 242, 294 A.2d 316 (1972).

“The guiding principle in determining custody is the best interest of the child.” Schult v. Schult, 241 Conn. 767, 777, 699 A.2d 134 (1997).

The judge “acts as *parens patriæ* to do what is best for the interest of the child. He is to put himself in the position of a ‘wise, affectionate, and careful parent . . . and make provision for the child accordingly.” Justice Cardozo in Finlay v. Finlay, 148 NE 624, 626 (1925).

Sections in this chapter:

- § 1.1 Factors Used by the Courts
- § 1.2 Parental Preference
- § 1.3 The Psychological Parent
- § 1.4 Wishes of the Child
- § 1.5 Parental Relocation Out of State
- § 1.6 Parental Misconduct

Tables in this chapter:

- Table 1 Criteria Used by the Courts in Determining Best Interest of the Child
- Table 2 ALR Annotations on Factors Used by the Courts
- Table 3 Survey of the States: Best Interest of the Child Standard
- Table 4 Proof of denial of child visitation rights
- Table 5 Proof of justification of denial of visitation rights
- Table 6 Proof as to which parent should be awarded custody of child

Section 1.1

Factors Used by the Courts

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the criteria used by the courts in Connecticut to determine the best interest of the child

DEFINITIONS:

- “We continue to adhere to the view that the legislature was acting wisely in leaving the delicate and difficult process of fact-finding in family matters to flexible, individualized adjudication of the particular facts of each case without the constraint of objective guidelines.” *Seymour v. Seymour*, 180 Conn. 705, 710, 433 A.2d 1005 (1980).

STATUTES:

- CONN. GEN. STAT. (2003)
 - § 46b-56. Superior Court orders re custody or visitation, the court shall:
 - (b). In making or modifying any order with respect to custody or visitation, the court shall:
 - (1) be guided by the best interest of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interest of the child and
 - (2) consider whether the party satisfactorily completed participation in a parenting education established pursuant to section 46b-69b.
 - (f) Notwithstanding the provisions of subsection (b) of this section, when a motion for modification of custody or visitation is pending before the court or has been decided by the court and the investigation ordered by the court pursuant to section 46b-6 recommends psychiatric or psychological therapy for a child, and such therapy would, in the court's opinion, be in the best interests of the child and aid the child's response to a modification, the court may order such therapy and reserve judgment on the motion for modification.
 - § 45a-719. Reopening judgment terminating parental rights. “. . . For the purpose of this section, "best interest of the child" shall include, but not be limited to, a consideration of the age of the child, the nature of the relationship of the child with the caretaker of the child, the length of time the child has been in the custody of the caretaker, the nature of the relationship of the child with the birth parent, the length of time the child has been in the custody of the birth parent, any relationship that may exist between the child and siblings or other children in the caretaker's household, and the psychological and medical needs of the child. The determination of the best interest of the child shall not be based on a consideration of the socio-economic status of the birth parent or the caretaker.”

CASES:

- Bretherton v. Bretherton, 72 Conn. App. 528, 538, 805 A.2d 766 (2002). “At the very outset of its analysis in Ireland, our Supreme Court announced that it had created the burden shifting scheme to further ‘our commitment to the best interests of the child standard. . . .’ Id., [Ireland v. Ireland, 246 Conn. 413,] 421. Moreover, after articulating the shifting burdens of proof, our Supreme Court again took the ‘opportunity to reaffirm that the best interests of the child must always govern decisions involving custodial or visitation matters.’ Id., [246 Conn. 425,] 430.”
- Crockett v. Pastore, 259 Conn. 240, 250, 789 A.2d 453 (2002). “In Roth [v. Weston], 259 Conn. 202, 223, 789 A.2d 431 (2002)], however, we determined that the best interest of the child was not a sufficiently compelling interest to warrant the state's intrusion into a fit parent's decision regarding visitation.”
- Ford v. Ford, 68 Conn. App. 173, 173-74, 789 A.2d 1104 (2002). “The defendant's claim to the contrary notwithstanding, the trial court properly decided whether the plaintiff should be allowed to relocate with the child pursuant to the statutory (§ 46b-56) best interest of the child standard; because the interests and circumstances of the parties at the postjudgment stage differ from those existing at the time of dissolution, the Ireland factors and its burden-shifting scheme do not apply to relocation issues arising when the initial custody determination is made.”
- Schult v. Schult, 241 Conn. 767, 777, 699 A.2d 134 (1997). “The guiding principle in determining custody is the best interest of the child.
- Garrett's Appeal from Probate, 44 Conn. Supp. 169, 187, 677 A.2d 1000 (1994). “Moreover, the court finds that the defendant's ‘parental acts or deficiencies’ support the conclusion that he should not, in the children's best interests, be their guardian at this time, based on the evidence of events transpiring up to the dates of the Probate Court hearings.”
- Knock v. Knock, 224 Conn. 776, 788-789, 621 A.2d 267 (1993). “[Conn. Gen. Stats.] Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child's wishes into consideration.”
- Rudolewicz v. Rudolewicz, 1 Conn. Sup. Ct. Repts. 664 (1986). *Enumerates 22 factors to be used in determining the best interests of the child. See [Table 1](#)*
- Cappetta v. Cappetta, 196 Conn. 10, 16, 490 A.2d 996 (1985). “In the search for an appropriate custodial placement, the primary focus of the court is the best interest of the child, the child’s interest in sustained growth, development, well-being, and in continuity and stability of its environment.”
- Seymour v. Seymour, 180 Conn. 705, 712, 433 A.2d 1005 (1980). “While psychological parenting is thus one indicator of the best interest of a child, a court has an independent responsibility to assure itself of the suitability of the parent to whom the child is primarily attached.”
- Hall v. Hall, 186 Conn. 118, 124, 439 A.2d 447 (1982). The plaintiff’s wilful disobedience of these court orders . . . evidenced gross disrespect for the law and raised questions about her character, which are relevant to the welfare of the child.”
- Yontef v. Yontef, 185 Conn. 275, 281, 440 A.2d 899 (1981). “We have never held, and decline now to hold, that a trial court is bound to accept the expert opinion of a family relations officer. As in other areas where expert testimony is offered, a trial court is free to rely on whatever parts of an expert’s opinion the court finds probative and helpful.”
- Ridgeway v. Ridgeway, 180 Conn. 533, 541, 429 A.2d 801 (1980). “In this case, the evidence showed that the children were living in a familiar and stable

environment with love and attention from their paternal grandparents; that the plaintiff at times had an adverse effect upon the children; and that the plaintiff's psychological instability was such that it posed a threat to the children's well-being."

- *Trunik v. Trunik*, 179 Conn. 287, 288, 426 A.2d 274 (1979). "... the trial court's order changing the award of custody was based on evidence which revealed: (1) that the plaintiff father had remarried and he and his present wife were capable of caring for his children; and (2) that while the children were home, the defendant mother, inter alia, frequently entertained a variety of nocturnal male visitors."
- *Pi v. Delta*, 175 Conn. 527, 533, 400 A.2d 709 (1978). "Similarly, in accordance with this court's constant emphasis upon consideration for the welfare of minor children, legitimate or not, we perceive no valid reason for denying the admitted natural father of an illegitimate child at the least the opportunity to obtain a judicial determination of custody where, as here, there is an allegation that the present custodian is unfit and that the interests of the children will best be served by a change in custody."

**WEST KEY
NUMBERS:**

- *Divorce* #298. Grounds for award of custody
- *Parent & Child* #2(3)
- *Infant* #19.2
 - (2) Welfare and best interest of the child
 - (4) Preference & age of child
 - (5) Religion, moral and social factors
- *Infant* #19.3
 - Proceedings affecting custody. Determination of right to custody

ENCYCLOPEDIAS:

- 27C C.J.S. *Divorce* (1986).
 - §§ 620-628. Considerations affecting child custody in general
 - § 621. Interest and welfare of child
 - § 622. Preference of the child
- 67A C.J.S. *Parent & Child* (1978).
 - §§ 20-30. Considerations affecting custody of child
- 59 AM. JUR. 2D *Parent & Child* (2002).
 - § 30. Custody disputes between parents—factors affecting choice
- 24A AM. JUR. 2D *Divorce & Separation* (1998).
 - §§ 931-938. Factors in determining custody

**TEXTS &
TREATISES**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - § 42.24 Factors for consideration by the court
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1995).
 - Chapter 10. Child Custody and Visitation by Jeffrey D. Ginzberg
 - §10.26 Factors in awarding custody and visitation
 - §10.27 Focus of the Court
- 1 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2002).
 - Chapter 20. Child custody
 - § 20.72. Criteria
- 3 ARNOLD H. RUTKIN ET AL., FAMILY LAW & PRACTICE (2001).
 - Chapter 32. Child custody and visitation
 - § 32.06. Standards used to determine custody between parents
 - [5]. Application of the Best Interests Standard

- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).
Chapter 10. Custody disputes between parents
§ 10.06. Standards for selecting the custodial parent
[2]. Best interest of the child
- DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2d ed. 1994).
Chapter 2. Child custody
§ 2.04. Best interest of the child rule

LAW REVIEWS:

- Lloyd Cutsumpas , *Contested Custody In Connecticut*, 54 CONNECTICUT BAR JOURNAL 193-212 (1980). *List of factors used to determine “best interest of the child” from the Family Relations Office Manual.*

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Table 1: Criteria Used by the Courts in Determining Best Interest of the Child

#	Factors	Authorities Cited
1.	Parenting skills	<i>Cappetti v. Cappetta</i> , 196 Conn. 10,16-17, 490 A.2d 996 (1985)
2.	"Each person's relationship with the child" ¹ "emotional ties of each parent with the child" ² "the child's primary psychological parent" ³	¹ <i>Cappetti v. Cappetta</i> , 196 Conn. 10, 17, 490 A.2d 996 (1985) ² <i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980) ³ <i>Seymour</i> , supra, at 711-712
3.	Character of parent by reason of willful disobedience of court orders	<i>Hall v Hall</i> , 186 Conn. 118, 124, 439 A.2d 447 (1982) <i>Stewart v. Stewart</i> , 177 Conn. 401, 407, 418 A.2d 62 (1979) <i>Simmons v. Simmons</i> , 172 Conn. 341, 348, 374 A.2d 1040 (1977)
4.	Willingness to facilitate visitation by the other parent.	<i>Seymour v. Seymour</i> , 180 Conn. 705, 713, 433 A.2d 1005 (1980)
5.	"[P]ast behavior as it relates to parenting ability"	<i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980) <i>Yontef v. Yontef</i> , 185 Conn. 275, 283, 440 A.2d 899 (1981)
6.	Family Relations Division Report recommendations	See <i>Yontef v. Yontef</i> , 185 Conn. 275, 281, 440 A.2d 899 (1981)
7.	Independent advice of attorney appointed to represent minor children	See <i>Yontef v. Yontef</i> , 185 Conn. 275, 281, 440 A.2d 899 (1981)
8.	Credibility	<i>Yontef v. Yontef</i> , 185 Conn. 275, 277, 440 A.2d 899 (1981)
9.	"[M]anipulative and coercive behavior in . . . efforts to involve children in the marital dispute."	<i>Yontef v. Yontef</i> , 185 Conn. 275, 281, 440 A.2d 899 (1981)
10.	A parent's behavior and its effects on the child(ren).	<i>Yontef v. Yontef</i> , 185 Conn. 275, 282, 440 A.2d 899 (1981)

11.	Continuity and stability of environment.	<i>Cappetti v. Cappetta</i> , 196 Conn. 10, 16, 490 A.2d 996 (1985)
12.	"[T]he flexibility of each parent to best serve the psychological development and growth of the child."	<i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980)
13.	Which parent is more willing and able to address medical and educational problems of the child and to take appropriate steps to have them treated and corrected."	<i>Faria v. Faria</i> , 38 Conn. Supp. 37, 47-50, 456 A.2d 1205 (1982)
14	"[C]hildren living in a familiar and stable environment with love and attention from their paternal grandparents."	<i>Ridgeway v. Ridgeway</i> , 180 Conn..533, 541, 429 A.2d 801 (1980).
15	Psychological instability of one parent posing a threat to the children well-being.	<i>Ridgeway v. Ridgeway</i> , 180 Conn..533, 541, 429 A.2d 801 (1980)
16	Recommendation that one party immediately commence in-patient treatment.	<i>Ridgeway v. Ridgeway</i> , 180 Conn..533, 541, 429 A.2d 801 (1980)
17	Visitation having an adverse effect on the child at times.	<i>Ridgeway v. Ridgeway</i> , 180 Conn..533, 540, 429 A.2d 801 (1980)
18	Remarriage.	<i>Trunik v. Trunik</i> , 179 Conn. 287, 289, 426 A.2d 274 (1979)
19	Parental sexual activity,	<i>Trunik v. Trunik</i> , 179 Conn. 287, 288, 426 A.2d 274 (1979)
20	"[C]onsistency in parenting and life style, insofar as these factors might affect the child's growth, development and well being."	<i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980)
21	"[T]he time each parent would be able to devote to the child on a day-to-day basis."	<i>Seymour v. Seymour</i> , 180 Conn. 705, 711, 433 A.2d 1005 (1980)
22	Untidy condition of home, alcoholism, leaving home unattended, and emotional problems.	<i>Simmons v. Simmons</i> , 172 Conn. 341, 346, 374 A.2d 1040 (1977)

*Rudolewicz v. Rudolewicz, 1 Conn. Sup. Ct. Repts. 664, 666 (1986).

Table 2 ALR Annotations on Factors Used by the Courts

ALR Annotations Factors Used by Courts	
Subject	Citation
Age of parent	Danny R. Veilleux, Annotation, <i>Age Of Parent As Factor In Awarding Custody</i> , 34 ALR5th 57 (1995).
AIDS	Claudia G. Catalano, Annotation, <i>Child Custody And Visitation Rights Of Persons Infected With AIDS</i> , 86 ALR4th 211 (1991).
Continuity of residence	Carol A. Crocca, Annotation, <i>Continuity Of Residence As Factor In Contest Between Parent And Nonparent For Custody Of Child Who Has Been Residing With Nonparent—Modern Status</i> , 15 ALR5th 692 (1993).
Disability of parent	Kristine Cordier Karnezis, Annotation, <i>Parent's Physical Disability Or Handicap As Factor In Custody Award Or Proceedings</i> , 3 ALR4th 1044 (1981).
Domestic violence	Jack M. Dagleish, Annotation, Construction and effect of statutes mandating consideration of, or creating presumption regarding, domestic violence in awarding custody of children, 51 ALR5th 241(1997).
Drug use by parent	Mary E. Taylor, Annotation, <i>Parent's Use Of Drugs As Factor In Award Of Custody Of Children, Visitation Rights, Or Termination Of Parental Rights</i> , 20 ALR5th 534 (1994).
Extramarital sexual relations	Diane M. Allen, Annotation, <i>Propriety Of Provision Of Custody Or Visitation Order Designed To Insulate Child From Parent's Extramarital Sexual Relationships</i> , 40 ALR4th 812 (1985).
Foreign country (residence)	M. David LeBrun, Annotation, <i>Propriety Of Awarding Custody Of Child To Parent Residing Or Intending To Reside In Foreign Country</i> , 20 ALR4th 677 (1983).
Grandparent	<ul style="list-style-type: none"> • Annotation, <i>Award Of Custody Of Child Where Contest Is Between Child's Father And Grandparent</i>, 25 ALR3d 7 (1969). • D.E. Yteberg, Annotation, <i>Award Of Custody Of Child Where Contest Is Between Child's Parent And Grandparents</i>, 31 ALR3d 1187 (1970). • D.E. Yteberg, Annotation, <i>Award Of Custody Of Child Where Contest Is Between Child's Mother And Grandparent</i>, 29 ALR3d 366 (1970).
Grounds for divorce	Annotation, <i>Award Of Custody Of Child To Parent Against Whom Divorced Is Decreed</i> , 23 ALR3d 6 (1969).
Mental health	Linda A. Francis, Annotation, <i>Mental Health Of Contesting Parent As Factor In Award Of Child Custody</i> , 53 ALR5th 375 (1997).

ALR Annotations

Factors Used by Courts

Preference or wishes of child	<ul style="list-style-type: none"> Wanda Ellen Wakefield, Annotation, <i>Desire Of Child As To Geographic Location Of Residence Or Domicile As Factor In Awarding Custody Or Terminating Parental Rights</i>, 10 ALR4th 827 (1981). Annotation, <i>Child's Wishes As Factor In Awarding Custody</i>, 4 ALR3d 1396 (1965).
Primary caretaker role	Annotation, <i>Primary Caretaker Role Of Respective Parents As Factor In Awarding Custody Of Child</i> , 41 ALR4th 1129
Religion	George L. Blum, Annotation, <i>Religion As Factor In Visitation Cases</i> , 95 ALR5th 533 (2002).
Relocation	Jay M. Zitter, Annotation, <i>Custodial Parent's Relocation As Grounds For Change Of Custody</i> , 70 ALR5th 377 (1999).
Separating children	Jay M. Zitter, Annotation, <i>Child Custody: Separating Child By Custody Awards To Different Parents—Post-1975 Cases</i> , 67 ALR4th 354 (1989).
Sexual orientation	<ul style="list-style-type: none"> Caroll J. Miller, Annotation, <i>Visitation Rights Of Homosexual Or Lesbian Parent</i>, 36 ALR4th 997 (1985). Wanda Ellen Wakefield, Annotation, <i>Initial Award Or Denial Of Child Custody To Homosexual Or Lesbian Parent</i>, 6 ALR4th 1297 (1981).
Smoking	Harriet Dinegar Milks, Annotation, <i>Smoking As Factor In Child Custody And Visitation Cases</i> , 36 ALR5th 377 (1996).
Stepparent	Wendy Evans Lehmann, Annotation, award of custody of child where contest is between natural parent and stepparent, 10 ALR4th 767 (1981).
Working mother	Edward L. Raymond, Annotation, <i>Mother's Status As "Working Mother" As Factor In Awarding Child Custody</i> , 62 ALR4th 259 (1988).

Section 1.2

Parental Preference

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SCOPE:

Bibliographic sources relating to presumption in Connecticut that it is in the best interest of the child to be in (1) the joint custody of their parent and (2) there is no presumption in Connecticut favoring one parent over the other.

DEFINITION:

- “If the child’s best interest require for him to have a change in custody, it must be made; if they require for him to be placed in the custody of the father rather than the mother, that too must follow.” *Simons v. Simons*, 172 Conn. 341, 350, 374 A.2d 1040 (1977).
- **Parent vs. Non parent:** “. . . 46b-56b provides that in any custody dispute pitting parent against nonparent, there is a presumption that it is in the best interest of the child that custody be awarded to the parent, which presumption may be rebutted.” *Bristol v. Brundage*, 24 Conn. App. 402, 405, 589 A.2d 1 (1991).

STATUTES:

- CONN. GEN. STAT. (2003)
§ 46b-56a. **Joint custody Presumption.**
There shall be a presumption, affecting the burden of proof, that joint custody is in the best interest of a minor child
§ 46b-56b. Presumption re best interest of child to be in custody of parent.
(b) In any dispute as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have custody.

COURT CASES

- *Doe v. Doe*, 244 Conn. 403, 455, 710 A.2d 1297 (1998). “As these authorities make clear, the presumption does not mean that the nonparent must, in order to rebut it, prove that the parent is unfit. It means that the parent has an initial advantage, and that the nonparent must prove facts sufficient to put into issue the presumed fact that it is in the child’s best interest to be in the parent’s custody. Once those facts are established, however, the presumption disappears, and the sole touchstone of the child’s best interests remains irrespective of the parental or third party status of the adults involved. In that instance, then, neither adult - the parent or the third party - enjoys any advantage or suffers any disadvantage as a result of his or her parental or third party status.”
- *Schult v. Schult*, 40 Conn. App. 675, 676, 672 A.2d 959 (1996). “The principal issue in this appeal is the proper construction and application of General Statutes §46b-56b, which creates a rebuttable presumption ‘that it is

in the best interest of the child to be in the custody of the parent' in any dispute as to the custody of a minor child involving a parent and a nonparent.”

- Antedomenico v. Antedomenico, 142 Conn. 558, 562, 115 A.2d 558 (1955). “The contest is not one primarily to determine the rights of the respective parties but rather the best interest of the child.”

ENCYCLOPEDIAS

- Thomas R. Trenkner, Annotation, *Modern Status Of Maternal Preference Rule Or Presumption In Child Custody Cases*, 70 ALR3d 262 (1976).
- *Child Custody Determination On Termination Of Marriage*, 34 POF2d 407 (1983).
 - § 2. Rights of respective parents
 - § 3. Determining factors

TEXTS & TREATISES:

- 1 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2002).
 - Chapter 20. Child custody
 - § 20.72. Criteria
 - § 20.73. Custodial arrangements
- 3 ARNOLD H. RUTKIN ET AL., FAMILY LAW & PRACTICE (2001).
 - Chapter 32. Child custody and visitation
 - §32.01[2]. Historical Background
 - [a]. Paternal preference and rights of father
 - [b]. Maternal preference
 - [c]. Gender-neutral best interests
 - § 32.06. Standards used to determine custody between parents
 - [1]. Statutory factors
 - [c]. joint custody
 - [5]. Application of Best Interest Standard
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2d ed. 1994).
 - Chapter 2. Child custody
 - §2.15 Preference of natural parent(s) over others; Generally
 - §2.16 _____. Preference of natural parent (s) over grandparent(s)
 - §2.17 _____. Preference of natural parent over adult siblings or other relatives
 - § 2.23. Joint custody
- 2 SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).
 - Chapter 10. Custody disputes between parents
 - § 10.04. Relative rights of mothers and fathers; married parents
 - § 10.05. Relative rights of mothers and fathers; nonmarital parents
 - § 10.06. Standards for selecting the custodial parent

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Table 3 Survey of the States: Best Interest of the Child Standard

Statute and case citations	Rutkin, A. <i>Family Law and Practice</i> (M. Bender). §32.06 “Standards used to determine custody.” Footnote 2.
Statute and case citations	ALEXANDER LINDEY AND LOUIS I. PARLEY, <i>LINDEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS</i> , 2d ed. (1999). §14.02 “Best interests” Standard. Footnote 1.
Case citations	DONALD T. KRAMER, <i>LEGAL RIGHTS OF CHILDREN</i> (2D ED. 1994). §2.04 Best interest of the child rule. Footnote 71, p. 38.
Statute and case citations	Susan A. Lentz, <i>Cause of Action for Modification of Child Custody Based on Neglect of Child by Custodial Parent</i> , 19 <i>Causes of Action</i> 143 §3, pp. 167-168 (1989).

The Psychological Parent

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to the identification of a child's psychological parent as a factor in determining the best interest of the child.

DEFINITION:

- “While psychological parenting is thus one indicator of the best interest of a child, a court has an independent responsibility to assure itself of the suitability of the parent to whom the child is primarily attached.” *Seymour v. Seymour*, 180 Conn. 705, 712, 433 A.2d 1005 (1980).

COURT CASES

- *In Re Brea B.*, 75 Conn. App. 466, 473, 816 A.2d 707 (2003). “The child experienced her great aunt, rather than her mother, as her psychological parent and expressed a clear preference to have no further contact with her mother. On the basis of the foregoing, we conclude that the court's finding that there was no ongoing parent-child relationship was not clearly erroneous.”
- *Azia v. Dilascia*, 64 Conn. App. 540, 552-553, 780 A.2d 992 (2001). “The fact that the defendant had been the child's primary psychological parent and caretaker in the past was relevant but was not dispositive on the issue of physical custody. Our Supreme Court in *Blake v. Blake*, supra, 207 Conn. 224-25, specifically indicated that an evaluation of the past was not enough. Although the mother had been important in the past and the father had not been as involved in the child's life for her first several years, he had become very involved in her life at the time of trial. The child's own therapist acknowledged that both parties were psychological parents of the child. We conclude that the court properly applied the standard established in *Blake*.”
- *Temple v. Meyer*, 208 Conn. 404, 410, 544 A.2d 629 (1988). “Even if the plaintiff had demonstrated that he has been . . . psychological parent, such a finding would not have demonstrated that visitation continued to be in the best interest of the child.”
- *Cappetta v. Cappetta*, 196 Conn. 10, 490 A.2d 996 (1985).
- *Seymour v. Seymour*, 180 Conn. 705, 711, 433 A.2d 1005 (1980). “. . . the concept of the psychological parent is not a fixed star by which custody decisions can invariably be guided.”

TEXTS & TREATISES

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
§42.25 The Psychological Parent
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1995).
Chapter 10. Child Custody and Visitation by Jeffrey D. Ginzberg
§ 10.28 Psychological Parent
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2d ed. 1994).
Chapter 2. Child custody
§ 2.08. The “Psychological Parent” doctrine

LAW REVIEWS:

- Martha F. Leonard and Sally Provence, *The Development Of Parent-Child Relationships And The Psychological Parent*, 53 CONNECTICUT BAR JOURNAL 320 (August 1979).

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Table 4 Proof of denial of child visitation rights

Proof of Denial of Child Visitation Rights 2 POF2d 801 (1974)	
A. Elements of Proof	§5. Guide and checklists
B. Testimony of Noncustodial Parent (Situation 1)	§ 6. History of visitation, and attempts to exercise rights
C. Testimony of Noncustodial Parent (Situation 2)	§7. Alienation of affection

Table 5 Proof of justification of denial of visitation rights

Proof of Justification of Denial of visitation rights 2 POF2d 808 (1974)	
A. Elements of proof	§8 Guide and checklist
B. Testimony of Custodial Parent	§9 Marital history and terms of decree §10 Exercise of visitation by noncustodian §11 Denial of visitation and justification
C. Testimony of Noncustodial Parent on Cross-Examination	§12 Motivation of noncustodian; reason for nonexercise of visitation rights
D. Testimony of Third Party with Knowledge of Situation	§13 Corroboration of custodian's testimony
E. Testimony of Police Officer Regarding Incident	§14 Expert testimony regarding noncustodian's behavior

Table 6 Proof as to which parent should be awarded custody of child

Proof As To Which Parent Should Be Awarded Custody Of Child 34 POF2d 426 (1983)	
A. Elements of proof	§ 11 Guide and checklists
B. Illustrative Case in Which Father Seeks Custody of Children 1. Evidence Offered on Father's Behalf	
a. Testimony of Father	§ 12 Introduction; mother's departure with children § 13 Neighbor environment § 14 Church attendance § 15 Witness' employment § 16 Provisions for child care § 17 Mother's neglect of children § 18 Mother's poor housekeeping § 19 Mother's mental problems—Violent temper, other unusual behavior § 20 — Depression and suicidal tendencies § 21 Mother's alcoholism
b. Testimony of Police Officer	§ 22 Neighbor environment
c. Testimony of Neighbor	§ 23 Mother's mental problems, alcoholism, and poor housekeeping
d. Testimony of child	§ 24 Child's wishes as to custody § 25 Mother's attempted alienation of affection
2. Evidence Offered on Mother's Behalf	
a. Testimony of Mother	§ 26 Introductions, relationship with husband and children § 27 Recognition of drinking problem § 28 Response to allegations as to poor housekeeping and child neglect
	[cont'd]

Proof As To Which Parent Should Be Awarded Custody Of Child

34 POF2d 426 (1983)

b. Testimony Of Court-Appointed Psychologist	<p>§ 29 Introductions, recommendation as to custody of children</p> <p>§ 30 Tests used as basis for recommendations</p> <p>§ 31 Response to mother's alleged emotional instability</p> <p>§ 32 Response to mother's alleged alcoholism</p>
3. Father's Cross-Examination of Court-Appointed Psychologist	<p>§ 33 Possible inaccuracy of diagnosis of mother's condition—Fallibility of tests</p> <p>§ 34 —Lack of reasonable justification for mother's behavior</p> <p>§ 35 —Possibility of different diagnosis by different psychologist</p> <p>§ 36 Poor prognosis for mother's recovery; re-evaluation of recommendation</p>

Section 1.4

Wishes of the Child

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the wishes of a child as a factor in determining the best interest of the child
- STATUTES:**
- CONN. GEN. STAT. (2003).
§ 46b-56(b). “In making or modifying any order with respect to custody or visitation, the court shall (1) be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference”
- COURT CASES**
- Azia v. Dilascia, 64 Conn. App. 540, 546, 780 A.2d 992 (2001). “The defendant first claims that the court improperly failed to consider the child’s desire to live with her mother. Specifically, the defendant argues that the court improperly discounted the child’s preference without finding that the child was not of a sufficient age or was incapable of forming an intelligent preference. We disagree.”
 - Knock v. Knock, 224 Conn. 776, 788, 621 A.2d 267 (1993). “Section 46b-56(b) does not require that the trial court award custody to whomever the child wishes; it requires only that the court take the child’s wishes into consideration.”
 - Faria v. Faria, 38 Conn. Supp. 37, 40, 456 A.2d 1205 (1982). “In this case it is concluded that the minor child, five years old, at the time of the hearing, is not of sufficient age or capable of forming an intelligent preference.
 - Gennarini v. Gennarini, 2 Conn. App. 132, 137, 477 A.2d 674 (1984). “First, whether the child’s preferences and feelings as to custody and visitation are a significant factor in the court’s ultimate determination of the best interest of the child will necessarily depend on all the facts of the particular case, including the child’s age and ability intelligently to form and express those preferences and feelings.”
- TEXTS & TREATISES**
- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
§ 42.27. Preference of the child
 - 2 FAMILY LAW PRACTICE IN CONNECTICUT (1995).
Chapter 10. Child Custody and Visitation by Jeffrey D. Ginzberg
§10.32. Child’s preference
 - 2 SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION (2002).
Chapter 10. Custody disputes between parents.
§ 10.08. The wishes of the child
[1]. In general
[2]. Consideration of the child’s preference
[3]. Factors affecting the weight given a child’s preference
[4]. Procedures for ascertaining the child’s preference

- 1 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2002).
Chapter 20. Child custody
§ 20.72[2][c]. Child's Wishes
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2d ed. 1994).
Chapter 2. Child custody
§ 2.06. The child's custodial preference
§ 2.07. —Manner of eliciting the child's custodial preference

LAW REVIEWS:

- Lloyd Cutsumpas , *Contested Custody In Connecticut*, 54 CONNECTICUT BAR JOURNAL 193-212 (1980).

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Section 1.5

Parental Relocation Out of State

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to a parent's decision to relocate child out of state as a factor in determining the best interest of the child

COURT CASES

- Bretherton v. Bretherton, 72 Conn. App. 528, 541, 805 A.2d 766 (2002). "Our Supreme Court did not intend for the burden shifting analysis [Ireland v. Ireland] to act as a means to preclude an inquiry into the best interest of the child. Accordingly, it does not follow that evaluating the best interest of the child, despite a custodial parent's inability to prove the legitimacy of a proposed relocation by a preponderance of the evidence, in any way erodes the purpose and goal of the burden shifting scheme."
- Ford v. Ford, 68 Conn. App. 173, 173-74, 789 A.2d 1104 (2002). "The defendant's claim to the contrary notwithstanding, the trial court properly decided whether the plaintiff should be allowed to relocate with the child pursuant to the statutory (§ 46b-56) best interest of the child standard; because the interests and circumstances of the parties at the postjudgment stage differ from those existing at the time of dissolution, the Ireland factors and its burden-shifting scheme do not apply to relocation issues arising when the initial custody determination is made."
- Ireland v. Ireland, 246 Conn. 413, 428, 717 A.2d 676 (1998). "In summary, we hold, therefore, that a custodial parent seeking permission to relocate bears the initial burden of demonstrating, by a preponderance of the evidence, that (1) the relocation is for a legitimate purpose, and (2) the proposed location is reasonable in light of that purpose. Once the custodial parent has made such a prima facie showing, the burden shifts to the noncustodial parent to prove, by a preponderance of the evidence, that the relocation would not be in the best interests of the child."
- Blake v. Blake, 207 Conn. 217, 223, 541 A.2d 1201 (1988). "Both parents agreed upon joint legal custody, but they disagreed about whether the defendant should have joint physical custody. Under these circumstances, 46b-56a (a) permits a court to award joint legal custody, but to award physical custody to one parent. The term 'joint custody' used in the judgment in the present case implies that the court awarded joint legal custody, but its specific provisions concerning removal of the children by the plaintiff and visitation by the defendant make it clear that primary physical custody has been awarded to the plaintiff. We hold that a court under 46b-56a (a) may award joint legal custody, when both parents agree, but at the same time deny joint physical custody, when both parents have not agreed to such an award, provided that the court finds that

such an award is appropriate under 46b-56a (b).”

- Presutti v. Presutti, 181 Conn. 622, 436 A.2d 299 (1980). “The controlling principle in a determination respecting custody is that the court shall be guided by the best interests of the child. General Statutes 46b-56 (b) In determining what is in the best interests of the child, the court is vested with a broad discretion.”

**TEXTS &
TREATISES**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
§ 42.35 Parental residence within or outside Connecticut
- 2 FAMILY LAW PRACTICE IN CONNECTICUT (1995).
Chapter 10. Child Custody and Visitation by Jeffrey D. Ginzberg
§ 10.36 Parental relocation outside of the state of Connecticut

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Section 1.6

Parental Misconduct

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to a parental misconduct as a factor in determining the best interest of the child

STATUTES:

- GENERAL STATUTES OF CONNECTICUT (2003)
 - § 46b-56. Superior Court orders re custody or visitation, the court shall:
 - (b). In making or modifying any order with respect to custody or visitation, the court shall:
 - (1) be guided by the best interest of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interest of the child and
 - (2) consider whether the party satisfactorily completed participation in a parenting education established pursuant to section 46b-69b.

COURT CASES

- Cappetta v. Cappetta, 196 Conn. 10, 17, 490 A.2d 996 (1985). “It may, however, be useful to add a cautionary note that this court has consistently rejected ‘any presumption that a parent's lifestyle necessarily has an adverse effect on a child.’”
- Greenwood v. Greenwood, 191 Conn. 309, 464 A.2d 771 (1983).
- Hall v. Hall, 186 Conn. 118, 439 A.2d 447 (1982).
- Faria v. Faria, 38 Conn. Supp. 37, 456 A.2d 1205 (1982).
- Yontef v. Yontef, 185 Conn. 275, 283, 440 A.2d 899(1981). “In the exercise of its awesome responsibility to find the most ‘salutary custodial arrangement for the children of divorce, the court must however take account of the parents' past behavior, since it must evaluate their present and future parenting ability and the consistency of their parenting for the purpose of determining which parent will better foster the children's growth, development and well-being.”
- Adams v. Adams, 180 Conn. 498, 430 A.2d 19 (1980).
- Friedman v. Friedman, 180 Conn. 132, 439 A.2d 823 (1980).
- Seymour v. Seymour, 180 Conn. 705, 713, 433 A.2d 1005 (1980). “Once it is definitively established . . . that each parent is loving, caring and otherwise suitable, the court must look to other factors to come to a decision about custody. The court was not in error in basing its award of custody to the mother on . . . her willingness to facilitate visitation by the father.”

ENCYCLOPEDIAS:

- 24A AM. JUR 2d *Divorce & Separation* (1998).
 - § 936. Effect of parent’s misconduct

**TEXTS &
TREATISES**

- 8 ARNOLD H. RUTKIN ET AL. CONNECTICUT PRACTICE SERIES. FAMILY LAW AND PRACTICE WITH FORMS (2d ed. 2000).
 - § 42.33. Parental misconduct as to custody
 - § 42.34 Other parental misconduct
- 3 ARNOLD H. RUTKIN ET AL., FAMILY LAW & PRACTICE (2001).
 - Chapter 32. Child custody and visitation
 - § 32.06[5][f]. Moral fitness
- 1 ALEXANDER LINDEY AND LOUIS I. PARLEY, LINDEY AND PARLEY ON SEPARATION AGREEMENTS AND ANTENUPTIAL CONTRACTS (2002).
 - Chapter 20. Child custody
 - § 20.72[2][i]. Moral character
 - [i]. In general
 - [ii]. Adultery and promiscuity
 - [iii]. Drugs and alcohol addiction
 - [iv]. Sexual orientation

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Child Abuse and Neglect in Connecticut

A Guide to Resources in the Law Library

- **Abused** “means that a child or youth (A) has had physical injury or injuries inflicted upon him other than by accidental means, or (B) has injuries which are at variance with the history given of them, or (C) is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation, deprivation of necessities, emotional maltreatment or cruel punishment;” Conn. Gen. Stats. §46b-120(3) (2001)
- “A child or youth may be found ‘**neglected**’ who (A) has been abandoned or (B) is being denied proper care and attention, physically, educationally, emotionally or morally or (C) is being permitted to live under conditions, circumstances or associations injurious to his well-being, or (D) has been abused;” Conn. Gen. Stats. §46b-120(8) (2001)
- **Child abuse and neglect** “means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child by a person who is responsible for the child’s welfare, under circumstances which indicate that the child’s health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary;” 42 U.S.C. §5106g(4) [see also 45 CFR §1340.2(d)]
- “‘**Person responsible for the health, welfare or care of a child or youth**’ means a child’s or a youth’s parent, guardian or foster parent; an employee of a public or private residential home, agency or institution or other person legally responsible in a residential setting; or any staff person providing out-of-home care, including center-based child day care, family day care or group day care, as defined in section 19a-77.” Conn. Gen. Stats. § 17a-93(l) (2001)
- “‘**Person entrusted with the care of a child of youth**’ means a person given access to a child or youth by a person responsible for the health, welfare or care of a child or youth for the purpose of providing education, child care, counseling, spiritual guidance, coaching, training, instruction, tutoring or mentoring of such child or youth.” Conn. Gen. Stats. § 17a-93(o), *amended by* 2002 Conn. Acts. 138 (Reg. Sess.) § 11.

Sections in this chapter:

- § 2.1 Duty to report child abuse
- § 2.2 Investigations and proceedings in child abuse or neglect cases
- § 2.3 Immediate removal of child
- § 2.4 Child witness in Connecticut
- § 2.5 Child abuse prevention
- § 2.6 Safe haven act
- § 2.7 False allegations of child abuse
- § 2.8 Child abuse and the unborn
- § 2.9 Adult memories of child abuse

See Also:

Appendix M: Child Abuse Prevention and Punishment

Appendix N: Mandated Reporter Law

Appendix O: Remedy for Wrongful Child Abuse Allegation

Internet Resources:

Connecticut Department of Children and Families: <http://www.state.ct.us/dcf/>

Connecticut Office of the Child Advocate <http://www.oca.state.ct.us>

The Children's Law Center of Connecticut <http://www.clcct.org>

Prevent Child Abuse Connecticut

http://www.volunteersolutions.org/uwact/volunteer/agency/one_170788.html

Clearinghouse on Child Abuse & Neglect: <http://www.calib.com/nccanch/>

Child Welfare League of America : <http://www.cwla.org>

Children's Defense Fund: <http://www.childrensdefense.org/>

Pew Commission on Children in Foster Care: <http://www.pewfostercare.org>

Administration for Children and Families: <http://www.acf.dhhs.gov/>

Duty to Report Child Abuse

Section 2.1

A Guide to Resources in the Law Library

See 2003 Conn. Acts 168, Sec. 6 & 7 (Reg. Sess.) for amendments to Conn. Gen. Stat. §§ 17a-101c & 17a-101i. *Effective July 1, 2003*

SCOPE:

Bibliographic resources relating to the duty to report suspected child abuse to the proper authorities.

STATUTES:

CONN. GEN. STAT. (2003)

- § 10-149a Felony conviction or fine pursuant to mandated reporting provisions. Notification by state's attorney.
- § 17a-93 Definitions
- § 17a-101 Protection of children from abuse. Mandated reporters. Training program for identification and reporting of child abuse and neglect.
- § 17a-101a Report of abuse or neglect by mandated reporter. Penalty for failure to report.
- § 17a-101b Oral report by mandated reporter to Commissioner of Children and Families or law enforcement agency.
- § 17a-101c Written report by mandated reporter.
- § 17a-101d Contents of oral and written reports.
- § 17a-101e Employers prohibited from discrimination against witness in child abuse proceedings ... Immunity for making report of child abuse in good faith. False report of child abuse. Penalty.
- § 17a-103 Reports by others. False reports. Notification to law enforcement agency.
- § 17a-103a Telephone hotline to receive reports of child abuse.
- § 46a-131 Child Advocate's duties. Child fatality review panel. Reports to the Governor and the General Assembly. Investigations.

FEDERAL STATUTES:

UNITED STATES CODE

- 42 U.S.C.A. §§ 5101—5106i (West Supp. 2002) Child Abuse Prevention and Treatment
§ 5106a Grants for States for child abuse and neglect prevention and treatment programs. Eligibility requirements.
(see § 5106a(b)(2)(A)(i) for provision related to reporting procedures)
- 25 U.S.C.A. §§ 3201—3211 (West 2001) Indian Child Protection and Family Violence Prevention Act.
§ 3203 Reporting Procedures.

- MASHANTUCKET PEQUOT TRIBAL LAWS tit. 2, ch. 5, §§ 1-3 (2001).
Child Neglect and Abuse Reporting

LEGISLATIVE

- Sandra Norman-Eady, [Mandated Reporter Law](#), Connecticut General Assembly. Office of Legislative Research Report No. 2002-R-0528 (June 6, 2002). **Appendix N**.

STATE REGULATIONS:

- CONN. AGENCIES REGS. §§ 17a-101-1—17a-101(e)-6 (1994)
 - a-101(e)-1 Scope of regulations.
 - § 17a-101(e)-2 Definitions.
 - § 17a-101(e)-3 Reports of child abuse or neglect.
 - § 17a-101(e)-4 Investigation of reports of child abuse or neglect by the department.
 - § 17a-101(e)-5 Notification of law enforcement agencies – removal of child from home – child to remain in own home.
 - § 17a-101(e)-6 Termination of protective services.
- CONN. AGENCIES REGS. § 19a-87b-10(J)(3) (2000)
The provider shall report actual or suspected child abuse or neglect of any child to the nearest office of the Department of Children and Families as mandated by Section 17a-101 and 17a-102 of the Connecticut General Statutes.
- CONN. AGENCIES REGS. § 10-145g-1 (1996) Reports of Child Abuse by a Certified School Employee.

FEDERAL REGULATIONS:

- CODE OF FEDERAL REGULATIONS (2002)
45 C.F.R. § 1340.14 Eligibility requirements.
(c) *Reporting*. The State must provide by statute that specified persons must report and by statute or administrative procedure that all other persons are permitted to report known and suspected instances of child abuse and neglect to a child protective agency or other properly constituted authority.

FORMS:

- [DCF-136 Report of Suspected Child Abuse / Neglect](#)

COURT CASES: (Connecticut)

- *Morales v. Kagel*, 58 Conn. App. 776, 783, 755 A.2d 915 (2000). “... we conclude that the defendant in this case did not owe a duty to the plaintiff to investigate the accusations against him prior to making a good faith report.”
- *Ward v. Greene*, 31 Conn. L. Rptr. 458 (New London Super. Ct., Feb. 21, 2002), 2002 WL 377922. “There is no appellate case law on the precise issue of whether a violation of section 17a-100 of the General Statutes ... creates a private right of action... The underlying purpose of this legislation is not to create unlimited liability to a non-reporter with an indirect or nonexistent relationship to a victim of child abuse.”
- *Greco v. Anderson*, Docket No. CV00-0501458S (New Britain Super. Ct., Oct. 23, 2000), , 2000 WL 1763732. “Extending immunity to false and malicious accusations, if that is what they were, would not serve the public purpose of discovering child abuse and would compromise the constitutional protection accorded to family autonomy. The Grecos have pled sufficient facts to bring this case within the ‘bad faith’ exception to the immunity afforded mandated reporters by the statute.”
- *Anderson v. Department of Public Health*, Docket No. CV99-0494513S (New Britain Super. Ct., Dec. 20, 1999), 1999 WL 1288935.
An appeal from a decision of the Department of Public Health to revoke plaintiff's family daycare license for failure to comply with state laws

concerning mandated reporting of suspicions of child abuse and neglect. Appeal dismissed.

- Doe v. Vibert, Docket No. CV97-048332S (New Britain Super. Ct., July 12, 1999), 1999 WL 545746. "...plaintiff has alleged that defendant Wartonick was negligent for failing to report to the Board of Education her stated suspicion of defendant's ... misconduct toward the plaintiff... This court concludes that the plaintiffs' complaint states a viable cause of action for negligence per se in that the plaintiffs allege the violation of a statute and plead facts sufficient to allege a causal link between the statutory violation and the alleged injury."
- Parker v. Nelson, 19 Conn. L. Rptr. 616 (Norwich Super. Ct., June 16, 1997), 1997 WL 345617. "The plaintiffs' complaint alleges that Nelson violated § 17a-101a by failing to report the instances of alleged child abuse communicated to her... This court concludes that the plaintiffs' complaint states a viable cause of action for negligence per se in that the plaintiffs' allege the violation of a statute and plead facts sufficient to allege a causal link between the statutory violation and the alleged injury."

**WEST KEY
NUMBERS:**

- *Infants* # 13.5

ENCYCLOPEDIAS:

- Danny R. Veilleux, Annotation, *Validity, Construction, and Application of State Statute Requiring Doctor or Other Person to Report Child Abuse*, 73 A.L.R. 4th 782 (1989).
- Jimmie E. Tinsley, *Failure to Report Suspected Case of Child Abuse*, 6 AM. JUR. P.O.F. 2d 345 (1975).
- Thomas L. Gowen & Richard J. Kohlman, *Professional Liability for Failure to Report Child Abuse*, 38 AM. JUR. TRIALS 1 (1989).

**TEXTS &
TREATISES:**

- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT*, 23-31 (1997).
- THOMAS B. MOONEY, *A PRACTICAL GUIDE TO CONNECTICUT SCHOOL LAW* 342 (2d ed., 2000).
- 2 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* §§ 16.14-16.20 (2d ed. 1994).
- ANN M. HARALAMBIE, *CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO CUSTODY AND TORT ACTIONS* (1999).
- INGER J. SAGATUN & LEONARD P. EDWARDS, *CHILD ABUSE AND THE LEGAL SYSTEM* 36 (1995).
- LEONARD KARP & CHERYL L. KARP, *DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT & SEXUAL ABUSE*, §10.03 (1989).
- SANDRA MORGAN LITTLE, *CHILD CUSTODY AND VISITATION LAW & PRACTICE*, §31.03 (2000).

LAW REVIEWS:

- Ronald Bard, *Connecticut's Child Abuse Law*, 48 CONN. BAR J. 260 (1974)
- Douglas J. Besharov, *Child Abuse and Neglect: Liability for Failure to Report*, 22 TRIAL, August 1986, at 67.
- Howard Davidson, *Reporting Suspicions of Child Abuse: What Must a Family Lawyer Do?* 17 FAM. ADVOC., Winter 1995, at 50.
- Margaret H. Meriwether, *Child Abuse Reporting Laws: Time for a Change*, 20 FAM. L. Q. 141 (1986).

HOTLINE:

- Connecticut Department of Children and Families
Child Abuse & Neglect Hotline: 1-800-842-2288, TD: 1-800-624-5518

(Spanish speaking staff is available)

COMPILER:

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Section 2.2

Investigations and Proceedings in Child Abuse or Neglect Cases

A Guide to Resources in the Law Library

2003 Conn. Public Acts

See **2003 Conn. Acts 168, Sec. 6 & 7 (Reg. Sess.)** for amendments to Conn. Gen. Stat. §§ 17a-101c & 17a-101i. *Effective July 1, 2003.*

2003 Conn. Acts 243(Reg. Sess.) An Act Concerning Interstate Placement of Children and Visitation for Children in the Care and Custody of the Commissioner of Children and Families and Child Placement Criminal History Records Checks. See Section 5 of this act for new provisions regarding children separated from parents and siblings due to DCF intervention, and the duty of DCF to ensure “that a child placed in the care and custody of the commissioner pursuant to an order of temporary custody or an order of commitment is provided visitation with such child’s parents and siblings, unless otherwise ordered by the court.”

SCOPE:

Bibliographic resources relating to the investigation and prosecution of allegations of child abuse and/or child neglect.

STATUTES:

CONN. GEN. STATUTES (2003)

- § 10-145b(m)(2) *Revocation of Education Certificate*
- § 10-149a Felony conviction of fine pursuant to mandated reporting provisions. Notification of state’s attorney.
- § 17a-28 Confidentiality of and access to records [access to DCF records pertaining to investigations of abuse or neglect]
- § 17a-47 Legal division re child abuse and neglect [assistant attorneys general responsible for prosecuting neglect petitions]
- § 17a-100 Ill treatment of children. [children in foster care]
- § 17a-101f Examination by physician. Diagnostic tests ... to detect child abuse.
- § 17a-101g Classification and evaluation of reports. Home visit. Removal of child in imminent risk of harm.
- § 17a-101h Coordination of investigatory activities. Interview with child. Consent.
- § 17a-101i Abuse of child by school employee. Suspension...

- § 17a-101j Notification of Chief State's Attorney ...
- § 17a-101k Registry of reports maintained by Commissioner of Children and Families...
- § 17a-103b Notice to parent or guardian of substantiated complaint of child abuse.
- § 17a-105 Temporary custody of abused child upon arrest of parent of guardian.
- § 17a-105a Child abuse and neglect unit within Division of State Police to assist investigation of child abuse and neglect.
- § 17a-106 Cooperation in relation to ... investigation of child abuse and neglect.
- § 17a-106b Impact of family violence in child abuse cases.
- § 17a-110 Permanency planning for children ... Procedure after commitment hearing.
- § 17a-111a Commissioner of Children and Families to file petition to terminate parental rights, when.
- § 17a-111b Commissioner of Children and Families may petition court re reasonable efforts to reunify parent with child. Determination by court.
- §§ 45a-607 to 45a-625 *Removal and appointment of guardians of a minor in Probate Court*
 - § 45a-619 Investigation by Commissioner of children and Families.
 - § 45a-623 Transfer of contested proceeding to Superior Court or another judge of probate.
- §§ 46a-13k to 46a-13q Office of the Child Advocate.
- § 46b-121 "Juvenile matters" defined. Authority of court.
 - (a) Juvenile matters in the civil session include all proceedings concerning uncared-for, neglected or dependent children and youth within this state, termination of parental rights of children committed to a state agency,..."
- § 46b-129 Commitment of child or youth. Petition for neglected, uncared-for, dependent child or youth. Hearing re temporary custody, order to appear or petition. Review of permanency plan. Revocation or commitment.
- § 46b-129a Examination by physician. Appointment of counsel and guardian ad litem.
- § 53-20 Cruelty to persons.
- § 53-21 Injury or risk of injury to, or impairing morals of, children.
- § 53a-71 Sexual assault in the second degree: Class C felony: nine months not suspendable.
- § 53a-73a Sexual assault in the fourth degree: Class A misdemeanor.

**FEDERAL
STATUTES:**

UNITED STATES CODE

- 25 U.S.C.A. §§ 3201 to 3211 (West 2001) Indian Child Protection and Family Violence Prevention
- 42 U.S.C.A. § 5106c (West Supp. 2003) Grants to states for programs relating to investigation and prosecution of child abuse and neglect cases.
- MASHANTUCKET PEQUOT TRIBAL LAWS tit. 5, ch. 3, § 1 (2002).

**CONNECTICUT
REGULATIONS:**

- CONN. AGENCIES REGS. §§ 17a-101-1 to 17a-101-13 (1994).
 - § 17a-101-4 Investigation of reports received.
 - § 17a-101-12 Circumstances requiring immediate removal.
 - § 17a-101-13 Procedures for immediate removal.
- CONN. AGENCIES REGS. §§ 17a-101(e)-3 to 17a-101(e)-6 (1994).

§17a-101(e)-4 Investigations of reports of child abuse or neglect by the department.

§17a-101(e)-5 Notification of law enforcement agencies—removal of child from home—child to remain in own home.

- CONN. AGENCIES REGS. § 17a-145-54 (1994) Causes for revoking or refusing to renew license.
- CONN. AGENCIES REGS. § 10-145g-1 (1996) Reports of child abuse by a certified school employee.
- CONN. AGENCIES REGS. § 19a-87b-14 (1996) Complaint investigations (Family Day Care Homes)
 - (b) Confidentiality of child abuse and/or neglect investigations.
 - (c) Duty to investigate
 - (d) Unannounced home visits; Notice and interview.
 - (f) Complaints referred to Department of Children and Families.

FEDERAL REGULATIONS:

CODE OF FEDERAL REGULATIONS (2002)

- 45 C.F.R. § 1340.14(d) Investigations.
“The State must provide for the prompt initiation of an appropriate investigation by a child protective agency or other properly constituted authority to substantiate the accuracy of all reports of known or suspected child abuse or neglect ...”

COURT RULES:

[Connecticut Practice Book](#) (2003 Edition)

- Chap. 32a Rights of Parties, Neglected, Uncared for and Dependent Children and Termination of Parental Rights.
- Chap. 33a Petitions for Neglect, Uncared for, Dependency and Termination of Parental Rights: Initiation of Proceedings, Orders of Temporary Custody and Preliminary Hearings.
- Chap. 34a Pleadings, Motions and Discovery...
- Chap. 35a Hearings Concerning Neglected, Uncared for and Dependent Children and Termination of Parental Rights.

COURT CASES: (Connecticut)

- *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 998, 109 S.Ct. 998, 103 L.Ed.2d 249 (1989).
- *Shay v. Rossi*, 253 Conn. 134, 180, 749 A.2d 1147 (2000). “The totality of these facts, if proven, would permit a fact finder to infer that the defendants filed the neglect and abuse petitions knowing that they were unjustified, and continued them with that knowledge,... and that they did so ... to justify their prior unjustified actions... We are constrained to conclude that the factually supported allegations are serious enough to warrant the conclusion that the defendants are not shielded by the doctrine of sovereign immunity.”
- *Doe v. Connecticut Department of Children and Youth Services*, 712 F.Supp. 277 (1989), *aff’d*, 911 F.2d 868 (1990). *DCF workers entitled to “qualified immunity” from liability.*
- *Williams v. Hauser*, 948 F.Supp. 164 (D. Conn. 1996). *DCF workers not entitled to “absolute prosecutorial immunity”.*
- *In re Brian D. and Shannon D.*, Juvenile Matters at New Haven, April 27, 1999, 5 Conn. Ops. 582 (May 24, 1999).
Foster parents’ motion to intervene in an abuse and neglect action brought by DCF ; motion denied.

Cases Discussing the doctrine of ‘Predictive Neglect’

- *In re Michael D.*, 58 Conn. App. 119, 123-124, 752 A.2d 1135 (2000), *cert.*

denied 254 Conn. 911 (2000). “By its terms, § 17a-101(a) connotes a responsibility on the state’s behalf to act before the actual occurrence of injury or neglect has taken place... Our statutes clearly and explicitly recognize the state’s authority to act before harm occurs to protect children whose health and welfare may be adversely affected and not just children whose welfare has been affected.”

- *In re Kelly S.*, 29 Conn. App. 600, 613, 616 A.2d 1161 (1992). “The trial court found that the respondent was not capable of providing the necessary care. The evidence fully supports that conclusion... Actual incidents of abuse or neglect are not required in determining that a child is uncared for under the ‘specialized needs’ section of the statute... For purposes of commitment of a child to the custody of the commissioner pursuant to § 46b-129, proof of ongoing parenting deficiencies is sufficient to satisfy the statute where those deficiencies mean that the child’s home is unable to provide the care required for her special needs.”
- *In re Chloe P.*, (Conn. Super. Ct., Middletown, Oct. 31, 2001).
- *In re Corey-Thomas*, (Conn. Super. Ct., Torrington, Sept. 20, 2000). “Two of the cases cited by petitioner aptly describe the nature of an necessity for the doctrine of predictive neglect.”

**WEST KEY
NUMBERS:**

- *Infants # 15*
- **Predictive Neglect - *Infants # 156***

CLE SEMINARS

- *Advanced and Complex Issues in Juvenile Law* (Conn. Bar Assoc. Seminar, Dec. 13, 1996).
- *Juvenile Law* (Conn. Bar Assoc. Seminar, Oct. 1994).
- *Representing Parents or Children in Termination of Parental Rights Cases* (Conn. Bar Assoc., Oct. 6, 1993).

**TEXTS &
TREATISE:**

- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT*, (1997).
- LYNN B. COCHRANE & JILL DAVIES, *FAMILY PROBLEMS, DCF, AND THE LAW: A GUIDE FOR PARENTS*, Greater Hartford Legal Assistance (2001).
- SAMUEL M. DAVIS, *RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM*, §§ 5A.1-5A.9 (2d ed. 2000)
- ANN M. HARALAMBIE, *CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO CUSTODY AND TORT ACTIONS* 18-29 (1999).
 §1-1 Appendix: The Investigation of Child Sexual Abuse: An International, Interdisciplinary Consensus Statement.
 “The report is designed to guide state and local officials, professionals, and advocates seeking to investigate child sexual abuse” (19).
- INGER J. SAGATUN & LEONARD P. EDWARDS, *CHILD ABUSE AND THE LEGAL SYSTEM* (1995).
 Roles of Child Protective Services, p. 38.
 Role of Law Enforcement Agencies, p. 43.
 The Legal Response to Child Abuse, p. 65
- LEONARD KARP & CHERYL L. KARP, *DOMESTIC TORTS: FAMILY VIOLENCE, CONFLICT & SEXUAL ABUSE*, §§ 8.11 to 8.15 (1989).
 § 8.11 Establishing a §1983 Claim Against Governmental Agencies and School Districts for Failure to Report Abuse (includes information on liability for failure to adequately investigate)
 § 8.14A Violations of Civil Rights (1983 Claim) for Removing and

Holding Children Pending Investigation.

§ 8.14B Unnecessarily Intrusive Investigations by Protective Agencies

§ 8.15 Negligent Supervision or Abuse Prevention of Abused Child

- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §§ 16.18 to 16.33 (2d ed. 1994).

§ 16.18 The Child Protection System

§ 16.19 Consequences of Failure to Investigate Allegations of Child Abuse

§ 16.20 Central Registries & Child Protective Service Records

§§ 16.23-16.33 Judicial Intervention

- 1 JOHN E. B. MEYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT CASES ch. 1 (3rd ed. 1997).
- KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS (2001).

LAW REVIEWS:

- Eric B. Martin, *Maintaining Sibling Relationships for Children Removed from Their Parents*, CHILDREN'S LEGAL RTS. J., Winter 2002-2003, at 47.
- National Association of Counsel for Children, *Recommendations for Representation of Children in Abuse and Neglect Cases*, CHILDREN'S LEGAL RTS. J., Winter 2001-2002, at 36.
- Peter J. Schmiedel, Charles P. Golbert & Adrienne Giorgolo, *Rights of Abused and Neglected Children to Safe and Adequate Foster Care under the Guarantees of the Fourteenth Amendment*, CHILDREN'S LEGAL RTS. J., Summer 2000, at 14.
- Howard Davidson, *The Legal Aspects of Corporal Punishment in the Home: When Does Physical Discipline Cross the Line to Become Child Abuse?*, CHILDREN'S LEGAL RTS. J., Fall 1997, at 18.
- Dyanne C. Greer, *Child Abuse and Discipline: A Parental and Prosecutorial Dilemma*, CHILDREN'S LEGAL RTS. J., Fall 1997, at 30.
- Michael R. Beeman, *Investigating Child abuse: the Fourth Amendment and Investigatory Home Visits*, 89 COL. L. REV. 1034 (1989).
- Allen F. Anderson, *Commentary on Nursing Mothers, Drugs, and the Limits of the Criminal Process*, 48 JUV. & FAM. CT. J., Winter 1997, at 53.
- Amy Sinden, *In Search of Affirmative Duties Toward Children Under a Post -Deshaney Constitution*, 39 UNIV. PA. L. REV. 227 (1990).
- Michael E. Lamb, *The Investigation of Child Sexual Abuse: An International, Interdisciplinary Consensus Statement*, 28 FAM. L. Q. 151 (1994).
- Douglas J. Gesharov, *Combating Child Abuse: Guidelines for Cooperation between Law Enforcement and Child Protective Agencies*, 24 FAM. L. Q. 209 (1990).

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Section 2.3

Immediate Removal of Child

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to circumstances which warrant the immediate removal of a child from his or her home environment and the procedures for removal.

STATUTES:

CONN. GEN. STAT. (2003)

- § 17a-101f Examination by physician. Diagnostic tests and procedures to detect child abuse.
“Any physician examining a child with respect to whom abuse or neglect is suspected shall have the right to keep such child in the custody of a hospital for no longer than ninety-six hours in order to perform diagnostic tests and procedures necessary to the detection of child abuse ... with or without the consent of such child’s parents or guardian ...”
- § 17a-101g(c) & (d) Removal of child in imminent risk of harm
- § 17a-105 Temporary custody of abused child upon arrest of parent or guardian.
- § 17a-113 Custody of child pending application for removal of guardian or termination of parental rights; enforcement by warrant.
- § 45a-607 Temporary custody of minor pending application to probate court for removal of guardian or termination of parental rights. [ex parte orders]
- § 45a-609 Application for removal of parent as guardian. Hearing. Notice...
- § 45a-610 Removal of parent as guardian.
- § 46b-129(b) Commitment of child or youth. Petition for neglected, uncared-for, dependent child or youth.

MASHANTUCKET PEQUOT TRIBAL LAWS tit. 5, ch. 3, §§ 3-4 (2002).

REGULATIONS

CONN. AGENCIES REGS. (1994)

- §17a-101-12 Circumstances for immediate removal (96-Hour Hold)
“Under the following circumstances, the Commissioner in accordance with Section 17a-101-13 may immediately remove a child from his surroundings for a period not to exceed 96-hours.
- §17a-101-13 Procedures for immediate removal.
- §17a-101(e)-5 Notification of law enforcement agencies - removal of child from the home - child to remain in own home.

COURT RULES:

[Connecticut Practice Book](#) (2003 Edition).

- § 33a-6 Order of Temporary Custody; Ex Parte Orders and Orders to Appear.
- § 33a-7 Preliminary Hearings
- § 33a-8 Emergency, Life-Threatening Medical Situations – Procedures.

FORMS:

- MARY ELLEN WYNN & ELLEN B. LUBELL, HANDBOOK OF FORMS FOR THE CONNECTICUT FAMILY LAWYER 145-150 (1991)
Form No. VII-A-6a *Application for Ex parte Temporary Injunction.*

COURT CASES:
(Connecticut)

- *Tenenbaum v. Williams*, 193 F.3d 581, 596 (2d Cir. 1999), *U.S. cert. denied* 529 U.S. 1098, 120 S.Ct. 1832 (2000). “Because we now hold that it is unconstitutional for a state official to effect a child’s removal on an ‘emergency’ basis where there is reasonable time safely to obtain judicial authorization consistent with the child’s safety, caseworkers can no longer claim, as did the defendants here, that they are immune from liability for such actions because the law is not ‘clearly established.’”
- *Pamela B. v. Ment*, 244 Conn. 296, 299, 709 A.2d 1089 (1998). “The plaintiff... brought this action ... seeking a declaratory judgment ... and injunctive relief on behalf of herself and a class of persons consisting of all parents in the state whose children have been or may be seized by the state department of children and families, and who have been or may be denied their statutory and consitutional right to challenge the state’s temporary custody in a timely evidentiary hearing.”
- *Williams v. Hauser*, 948 F. Supp. 164 (D. Conn. 1996). *Mother brought action against DCF social workers and four police officers alleging they violated her rights when they secured a court order to obtain custody of her children.*
“... the motion to dismiss based on absolute immunity is denied. Qualified immunity sufficiently protects the interests of DCF employees and ensures the right balance between an efficient judicial process and the responsible removal of children” (167).
- *Doe v. Connecticut Department of Children and Youth Services*, 712 Fed. Supp. 277 (D. Conn. 1989), affirmed 911 F.2d 868 (1990). “Civil rights action was brought agains state child welfare officials arising out of emergency removal and temporary custody of child based on allegations of child abuse.”

TEXTS & TREATISE:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT , 35-43 (1997).
- Arthur E. Webster, Child Protection in Connecticut Courts: Basic Practice and Procedure, *in* JUVENILE LAW 7 (Connecticut Bar Association Seminar Manual, October 1994).

LAW REVIEWS:

- Eliot R. Clauss, *Ex Parte Order in Child Abuse Cases: Minimizing Judicial Process Trauma*, 4 CONN. FAM. LAW., Winter 1989, at 38.

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Section 2.4

Child Witnesses in Connecticut

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the vulnerability of child witnesses and the reliability of child testimony.
- CONSTITUTION:**
- U.S. Const. amend. VI.
 - Conn. Const. art. I, § 8.
- STATUTES:**
- CONN. GEN. STATUTES (2003)
- § 1-25 *Oath for witnesses 12 years of age or younger*
 - § 46b-49 Private hearing.
 - § 46b-138a Testimony of accused juvenile, parent or guardian in juvenile proceedings.
 - § 54-86g Testimony of victim of child abuse.
 - § 54-86h Competency of child as witness.
- UNITES STATES CODE ANNOTATED
- 18 U.S.C.A. § 3509 Child victims and child witnesses' rights (West 2000).
- COURT RULES:**
- [Connecticut Practice Book](#) (2003 Edition)
 - § 25-59 Closed Hearings and Records.
 - § 32a-1 Right to Counsel and to Remain Silent.
 - § 32a-4 Child Witness (*juvenile matters*).
- CASES:**
- [Globe Newspaper Co. v. Superior Court](#), 457 U.S. 596, 102 S.Ct. 2613 (1982).

This case addresses the constitutionality of a Massachusetts statute which, "as construed by the Massachusetts Supreme Judicial Court, requires trial judges, at trials for specified sexual offenses involving a victim under the age of 18, to exclude the press and general public from the courtroom during the testimony of that victim." (p. 598)

Held: "... § 16A, as construed by the Massachusetts Supreme Judicial Court, violates the First Amendment to the Constitution." (p. 610-611)
 - [State v. Bronson](#), 258 Conn. 42, 50, 779 A.2d 95 (2001). "In the exercise of discretion, the trial court must conduct an assessment of the victim's reliability as a witness pursuant to the test set forth in *Jarzbek* ... We conclude that the defendant's request for an expert's assessment should have been granted."
 - [State v. Aponte](#), 249 Conn. 735, 738 A.2d 117 (1999)

"We conclude that the actions of the prosecutor in giving the victim a Barney

doll prior to her testifying, along with the trial court's limitations on the defendant's ability to expose to the jury the impact that such conduct may have had on her testimony, harmfully deprived the defendant of due process..."(737).

"This four year old's inability to immediately 'shift gears' does not demonstrate a lack of comprehension such that her testimony should have been disallowed" (760).

- State v. Jarzbek, 204 Conn. 683, 704, 529 A.2d 1245 (1987), *cert. denied*, 484 U.S. 1061, 108 S.Ct. 1017, 98 L.Ed.2d 982 (1989)
"We conclude that, in criminal prosecutions involving the alleged sexual abuse of children of tender years, the practice of videotaping the testimony of a minor victim outside the physical presence of the defendant is, in appropriate circumstances, constitutionally permissible... We ... mandate a cases-by-case analysis, whereby a trial court must balance the individual defendant's right of confrontation against the interest of the state in obtaining reliable testimony from the particular minor victim in question... Under the approach we adopt today, a trial court must determine, at an evidentiary hearing, whether the state has demonstrated a compelling need for excluding the defendant from the witness room during the videotaping of a minor victim's testimony."
- State v. James, 211 Conn. 555, 560 A.2d 426 (1989).
"We conclude that the trial court did not abuse its discretion in refusing the defendant's request to charge upon the credibility of a child witness." (p. 571)
- State v. Angel, 237 Conn. 321, 677 A.2d 912 (1996).
"The defendant in this case has similarly failed to establish that the trial court's refusal to grant his request for a child credibility instruction constituted an abuse of discretion." (p. 331)
- State v. Marquis, 241 Conn. 823, 699 A.2d 893 (1997).
"The issue in this certified appeal is whether a trial court has the discretion, under *State v. Jarzbek*, and General Statutes § 54-86g, to order that a child witness be examined by an expert witness for the defense before deciding whether to grant the state's motion for videotaped testimony pursuant to § 54-86g(a). We conclude that the trial court has the discretion to order such an examination ..." (p. 824-825)

WEST KEY NUMBERS:

- *Witnesses* 39, 40(1,2), 45(2)

ENCYCLOPEDIAS:

- 81 AM. JUR. 2d *Witnesses* §§ 210-224 (1992).
- 97 C.J.S. *Witnesses* §§ 58, 63 (1957).
- Brent G. Filbert, Annotation, *Admissibility of Expert Testimony as to Proper Techniques for Interviewing Children or Evaluating Techniques Employed in Particular Cases*, 87 A.L.R. 5th 693 (2001).
- Scott M. Smith, Annotation, *Validity, Construction, and Application of Child Victims' and Child Witnesses' Rights Statute (18 U.S.C.S. § 3509)*, 121 A.L.R. Fed. 631 (1994).
- Carol J. Miller, Annotation, *Instructions to Jury as to Credibility of Child's Testimony in Criminal Case*, 32 A.L.R. 4th 1196 (1984).

TEXTS & TREATISES:

- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT* 79-80 (1997).
- LUCY S. MCGOUGH, *CHILD WITNESSES: FRAGILE VOICES IN THE AMERICAN LEGAL SYSTEM* (1994).
- ANN M. HARALAMBIE, *CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO*

CUSTODY AND TORT ACTIONS 317-338 (1999)

- ANNE GRIFFEN WALKER, HANDBOOK ON QUESTIONING CHILDREN: A LINGUISTIC PERSPECTIVE (1994).
- ANN. M HARALAMBIE, THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES 103-133 (1993).
- 2 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
§§ 24.10 - 24.16 "Children's Memory"
§§ 24.17-24.22 "Children's Testimony"
§§ 21.07 "Child Witness"
- JOHN E.B. MEYERS, EVIDENCE IN CHILD ABUSE & NEGLECT CASES chs. 3 & 6 (3rd ed., 1997).
- JON'A F. MEYER, INACCURACIES IN CHILDREN'S TESTIMONY: MEMORY, SUGGESTIBILITY, OR OBEDIENCE TO AUTHORITY (1997).
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §§ 13.01-13.14 (1994).
- MICHAEL J. DALE et al., REPRESENTING THE CHILD CLIENT §§ 7.01-7.7.09 (1987).

LAW REVIEWS:

- Jonathan Spodnick, *Competency of the Child Witness in Sexual Assault Cases: Examining the Constitutionality of Connecticut General Statute §54-86h*, 10 UNIV. OF BRIDGEPORT L. REV. 135 (1989).
- Kerry R. Callahan, *Protecting Child Sexual Abuse Victims in Connecticut*, 21 CONN. L. REV. 411 (1989).
- Nancy W. Perry and Larry L. Teply, *Interviewing, Counseling, and In-Court Examination of Children: Practical Approaches for Attorneys*, 18 CREIGHTON L. REV. 1369 (1985), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 665 (2d ed. 2001).
- Julie A. Dale, *Ensuring Reliable Testimony From Child Witnesses in Sexual Abuse Cases: Applying Social Science Evidence to a New Fact-Finding Method*, 57 ALBANY L. REV. 187 (1993).
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Child Abuse Prevention

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to state and federal programs and activities developed to prevent child abuse and neglect

STATUTES:

CONN. GEN. STATUTES (2003)

- § 7-294g. State and local police training programs to provide training re domestic violence, child abuse, and suicide intervention procedures
- § 17a-3. Powers and duties of the department. Master Plan. [Department of Children and Families]
- § 17a-49. Grants for programs to treat and prevent child abuse and neglect ...
- § 17a-50. Children's Trust Fund established...

“There is established a Children's Trust Fund the resources of which shall be used by the Department of Children and Families ... to fund programs aimed at preventing child abuse.”
- § 17a-101. Protection of children from abuse. Mandated reporters. Training program for identification and reporting of child abuse and neglect.
- § 17a-106. Cooperation in relation to prevention, identification and investigation of child abuse and neglect.
- § 17a-106c. Family Violence Coordinating Council. Members. Responsibilities.

The responsibility of the council shall include, but not be limited to:
... (2) identifying and promoting legislation, services and resources to prevent and address family violence;
- § 17a-125 Out-of-Home Placements Advisory Council.
- § 19a-4i Office of Injury Prevention.
- § 46a-13K et seq. Office of the Child Advocate

UNITED STATES CODE

- 42 U.S.C.A. §5101 et seq. (West Supp. 2003). “Child Abuse Prevention and Treatment Act”

REGULATIONS

- CONN. AGENCIES REGS. §§ 17a-50-1 to 17a-50-7 (1993)
§17a-50-1(c) “‘Children's Trust Fund’ means a designated account operated and maintained by the Department to provide financial support for community based child abuse prevention activities.”
- 45 C.F.R Part 1340 (2002) Child abuse and neglect prevention and treatment.

LEGISLATIVE REPORTS:

- SAUL SPIGEL, CHILD ABUSE PREVENTION AND PUNISHMENT, Connecticut General Assembly, Office of Legislative Research, [Report No. 2002-R-0836](#) (Oct. 18, 2002). **Appendix M.**

CASES:

Cases Discussing the doctrine of ‘Predictive Neglect’

- *In re Michael D.*, 58 Conn. App. 119, 123-124, 752 A.2d 1135 (2000), *cert. denied* 254 Conn. 911 (2000). “By its terms, § 17a-101(a) connotes a responsibility on the state’s behalf to act before the actual occurrence of injury or neglect has taken place... Our statutes clearly and explicitly recognize the state’s authority to act before harm occurs to protect children whose health and welfare may be adversely affected and not just children whose welfare has been affected.”
- *In re Kelly S.*, 29 Conn. App. 600, 613, (1992). “The trial court found that the respondent was not capable of providing the necessary care. The evidence fully supports that conclusion... Actual incidents of abuse or neglect are not required in determining that a child is uncared for under the ‘specialized needs’ section of the statute... For purposes of commitment of a child to the custody of the commissioner pursuant to § 46b-129, proof of ongoing parenting deficiencies is sufficient to satisfy the statute where those deficiencies mean that the child’s home is unable to provide the care required for her special needs.”
- *In re Corey-Thomas*, (Conn. Super. Ct., Torrington, Sept. 20, 2000). “Two of the cases cited by petitioner aptly describe the nature of an necessity for the doctrine of predictive neglect.”

WEST KEY NUMBERS:

- **Predictive Neglect - Infants # 156**

TREATISES:

- 2 DONALD T. KRAMER, *LEGAL RIGHTS OF CHILDREN* §§ 17.01-17.12 (2d ed. 1994).

LAW REVIEWS:

- Donna J. Goldsmith, *In the Best Interests of an Indian Child: The Indian Child Welfare Act*, 53 *JUVENILE AND FAMILY COURT JOURNAL*, Fall 2002, at 9.
- Richard R. Fields, Book Note, *The Future of Child Protection: How to Break the Cycles of Abuse and Neglect*, 3 *J.L. & FAM. STUD.* 243 (2001).
- Jennifer L. Reichert, *Judges’ Group Releases Guidelines for Protecting Victims of Family Violence*, 35 *TRIAL*, August 1999, at 83.
- Howard A. Davidson, *Protecting America’s Children: a Challenge*, 35 *TRIAL*, January 1999, at 22.
- Michael S. Wald & Sophia Cohen, *Preventing Child Abuse—What Will It Take?*, 20 *FAM. L. Q.* 281 (1986).

WEB SITES:

- [Prevent Child Abuse America](http://www.preventchildabuse.org) <http://www.preventchildabuse.org>
“Working with chapters in 39 states and the District of Columbia, we provide leadership to promote and implement prevention efforts at both the national and local levels.”
- [Wheeler Clinic – Prevent Child Abuse CT](http://www.wheelerclinic.org/children/prevent_childabuse_children.php)
http://www.wheelerclinic.org/children/prevent_childabuse_children.php
“Prevent Child Abuse Connecticut (PCA CT) is a non-profit program dedicated to the prevention of all forms of child abuse, with an emphasis on promoting healthy family relationships. PCA CT is the Connecticut chapter of Prevent Child Abuse America.”

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Section 2.6

Safe Havens Act

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to Connecticut's Safe Havens Act for Newborns.
- STATUTES:** CONN. GEN. STATUTES (2003)
- § 17a-57 Designation of emergency room nursing staff to take physical custody of infant voluntarily surrendered.
 - § 17a-58 Physical custody of infant upon voluntary surrender by parent or agent. Medical history. Identification bracelet.
 - § 17a-59 Notification of custody. Assumption of care and control by commissioner.
 - § 17a-60 Reunification of parent with infant. Confidentiality of information provided designated employee.
 - § 17a-61 Public information program.
 - § 53-21(b) & §53-23(b) "The act of a parent or agent leaving an infant thirty days or younger with a designated employee pursuant to section 17a-58 shall not constitute a violation of this section."
 -
- COURT CASES:** (Connecticut)
- *In re of Olivia Doe*, 189 Misc. 2d 512, 733 N.Y.Supp. 2d 326 (2001). *After the parents left their newborn child at a 'safe haven' site, the Dept. Social Services petitioned the court to terminate parental rights and grant Social Services guardianship and custody.. The court granted the petition so as to free the child for adoption.*
- ADMINISTRATIVE AGENCIES - RESOURCES**
- State of Connecticut, Department of Children and Families, ["What is the Safe Havens Act for Newborns?"](#), available on the DCF website.
 - State of Connecticut, Department of Children and Families, [Policy Manual, § 34-12-4.](#)
- LAW REVIEWS:**
- Ana L. Partida, Note, *The Case for "Safe Haven" Laws: choosing the Lesser of Two Evils in a Disposable Society*, 28 NEW ENG. J. ON CRIM & CIV. CONFINEMENT 61 (2002).
 - Sarah Biehl, *Validating Oppression: Safe Haven Laws as Perpetuation of Society's Demonization of "Bad" Mothers*, CHILDREN'S LEGAL RIGHTS JOURNAL, Winter 2002-03, at 17.
 - Karen Vassilian, *A Band-Aid or a Solution? Child Abandonment Laws in California*, 32 MCGEORGE L. REV. 752 (2001).
 -
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Section 2.7

False Allegations of Child Abuse

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to false reports or false allegations of child abuse.
- STATUTES:** CONN. GEN. STATUTES (2003)
- §17a-101e(c) False reports of child abuse. Penalty.
 - §17a-103 Reports by others. False reports. Notification to law enforcement agency.
 - (a) “All oral reports of suspected child abuse or neglect shall be recorded and the person receiving the report “shall state the penalty for knowingly making a false report ...”
 - (b) “... if the commissioner or his representative suspects or knows that such person has knowingly made a false report, such identity shall be disclosed to the appropriate law enforcement agency and to the perpetrator of the alleged abuse.”
 - §45a-615 False or malicious application for removal of guardian. Penalty.
- REGULATIONS** CONN. AGENCIES REGS. (1994)
- § 17a-101-4(a) “...all reports that are determined to be unfounded shall be expunged.
 - § 17a-101(e)-4(d) “Reports of child abuse or neglect determined to be unfounded will be expunged from the Child Abuse and Neglect Registry ...”
- COURT CASES:** (Connecticut)
- Riedl v. Plourde, No. CV-02-0088965-S Conn. Super. Ct., Litchfield, Feb. 10, 2003). “The defendants were not mandated reporters and can not expect to receive any greater immunity than accorded to mandated reporters. In fact, any person who makes a knowingly false report of child abuse may be fined not more than \$2,000 or imprisoned not more than on year or both. It would be incongruous if the defendants were immune from civil liability in this situation. For these reasons the motion to strike is denied.”
 - Greco v. Anderson, 28 Conn. L. Rptr. 605 (New Britain Super. Ct., Oct. 23, 2000), 2000 WL 1763732. “The plaintiffs ... allege that the defendant Anderson, ‘made false and malicious accusations’ of child abuse on their part to an employee of the state Department of Children and Families... I conclude that a motion to strike is appropriate to raise the immunity issue. I also conclude, however, that the Grecos have pled sufficient facts which, if proven, would overcome the claim of immunity.”
 - Wilkinson v. Wiegand, Docket No. FA92 0517285 (Hartford Super. Ct., Jan.

27, 1995), 1995 WL 43693. *In this dissolution of marriage case, the plaintiff husband was awarded a \$500,000 lump sum alimony payment. “Of particular note is the intolerable cruelty which the defendant has caused by subjecting the plaintiff to false allegations of sexual abuse, and the humiliation which resulted from that...”*

- Butler v. Butler, Docket No. FA90-027128S (Hartford Super. Ct., Feb. 19, 1992).

A child custody dispute where allegations of child sexual abuse were made by the mother. The allegations were eventually found to be invalid. The parties were granted joint legal custody, and primary physical custody was given to the Plaintiff father.

TEXTS & TREATISE:

- INGER J. SAGATUN & LEONARD P. EDWARDS, CHILD ABUSE AND THE LEGAL SYSTEM 100 (1995).
- SANDRA MORGAN LITTLE, CHILD CUSODY AND VISITATION LAW & PRACTICE § 31.02[1][f], § 31.04[1] (2000).
- 1 JOHN E.B. MEYERS, EVIDENCE IN CHILD ABUSE AND NEGLECT §5.5 (3rd ed. 1997)
- 2 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES §16.03 (1993).
- ANN M. HARALAMBIE, CHILD SEXUAL ABUSE IN CIVIL CASES: A GUIDE TO CUSTODY AND TORT ACTIONS (1999) [see index references under ‘false allegations’]

LAW REVIEWS:

- Terese L. Fitzpatrick, *Innocent Until Proven Guilty: Shallow Words for the Falsely Accused in a Criminal Prosecution for Child Sexual Abuse*, 12 UNIV. BRIDG. L. REV. 175 (1991).
- Corey L. Gordon, *False Accusations of Child Abuse in Child Custody Disputes*, 4 CONN. FAM. L. J. 11 (1985).
- Richard A. Gardner, *Differentiating Between Bona fide and Fabricated Allegations of Sexual Abuse of Children*, 5 J. AM. ACAD. MATRIM. LAW. 1 (1989).
- Curtis M. Loveless, *Sexual Abuse Allegations in Child Custody Cases—Some Practical Considerations*, 5 J. AM. ACAD. MATRIM. LAW. 47 (1989).
- Meredith Sherman Fahn, *Allegations of Child Sexual Abuse in Custody Disputes: Getting to the Truth of the Matter*, 25 FAM. L. Q. 193 (1991).
- Ann M. Haralambie, *Child Sexual Abuse: Defending the Alleged Abuser*, 17 FAM. ADVOC, Winter 1995, at 52.

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Section 2.8

Child Abuse and the Unborn

2003 Conn. Acts 03-21 An Act Concerning Assault of a Pregnant Woman.

(Jenny's Law)

Section 1. (NEW) (*Effective October 1, 2003*) (a) A person is guilty of assault of a pregnant woman resulting in termination of pregnancy when such person commits assault in the first degree as provided under subdivision (1) of subsection (a) of section 53a-59 of the general statutes and (1) the victim of such assault is pregnant, and (2) such assault results in the termination of pregnancy that does not result in a live birth.

(b) In any prosecution for an offense under this section, it shall be an affirmative defense that the actor, at the time such actor engaged in the conduct constituting the offense, did not know that the victim was pregnant.

(c) Assault of a pregnant woman resulting in termination of pregnancy is a class A felony.

Approved May 12, 2003

SCOPE:

Bibliographic resources relating to abuse or neglect of an unborn child and the extent to which a parent may be held accountable for prenatal injury

STATUTES:

CONN. GEN. STATUTES (2003)

- § 17a-710 Substance abuse treatment programs for pregnant women and their children.
- § 17a-711 Task force on substance-abusing women and their children.

COURT CASES:

(Connecticut)

- State v. Courchesne, 262 Conn. 537, 816 A.2d 562 (2003). The defendant was convicted of the murder of both a pregnant woman and her infant. A caesarian delivery was necessary after the stabbing of the mother. The infant died 42 days after the stabbing.
- In Re Valerie D., 223 Conn. 492, 524, 613 A.2d 748 (1992). "We therefore infer from the legislative activity in 1990 and intent that § 45a-171(f)(2) does not contemplate a petition for termination of parental a petition for termination of parental rights based upon the prenatal drug use by the mother."
- In the Interest of Cesar G., Child Protection Session (Middletown Super. Ct., May 4, 2000), 1995 WL 43693. "In neither Ground F nor Ground E did the legislature provide that the conduct related to the 'other child' had to have occurred subsequent to the birth of the subject child. If it had intended that meaning, it easily could have included such language... Accordingly, the court holds that Ground F may apply to a child who was not born when the subject conduct occurred."

**TEXTS &
TREATISE:**

- INGER J. SAGATUN & LEONARD P. EDWARDS, CHILD ABUSE AND THE LEGAL SYSTEM, 231-243 (1995).
Chap. 14 “Fetal Abuse”: The Case of Drug-Exposed Infants.
- 2 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §16.11 (2d ed. 1994).

ENCYCLOPEDIAS:

- Mary E. Taylor, Annotation, *Parent’s Use of Drugs as Factor in Award of Custody of Children, Visitation Rights, or Termination of Parental Rights*, 20 A.L.R. 5th 534 (1994).

LAW REVIEWS:

- David A. Hollander, *In Re Valerie D.: The New Word on the Street*, 13 BRIDGEPORT L. REV. 989 (1993).
- Margeret P. Spencer, *Prosecutorial Immunity: The Response to Prenatal Drug Use*, 25 CONN. L. REV. 393 (1993).
- Tara Kole & Laura Kadetsky, *The Unborn Victims of Violence Act*, 39 HARV. L. ON LEGIS. 215 (2002).
- Michael Holzapfel, Comment, *The Rights to Live, The Right to Choose, and The Unborn Victims of Violence Act*, J. CONTEMP. HEALTH L. & POL’Y 431 (2002).
- Leslie Ayers, Note, *Is Mama a Criminal? An Analysis of Potential Criminal Liability of HIV-Infected Pregnant Women in the Context of Mandated Drug Therapy*, 50 DRAKE L. REV. 293 (2002).
- Lori Fulton, *Protective Custody of the Unborn: Involuntary Commitment of Pregnant, Substance-Abusing Mothers for the Protection of Their Unborn Children*, 21 CHILDREN’S LEGAL RTS. J., Fall 2001, at 8.
- Sandy Banks, *Crime and the Myth of the Perfect Mother*, L.A. TIMES, May 27, 2001, at E-1. (*Woman convicted of killing her unborn child by smoking cocaine*)
- Nancy Kubasek & Melissa Hinds, *The Communitarian Case Against Prosecutions for Prenatal Drug Abuse*, 22 WOMEN’S RIGHTS L. RTS. 1 (2000).
- Robyn M. Kaufman, *Legal Recognition of Independent Fetal Rights: The Trend Towards Criminalizing Prenatal Conduct*, 17 CHILDREN’S LEGAL RTS. J., Spring 1997, at 20.
- Timothy Lynch & Nancy Grace, *Individual Right: Is the Prosecution of ‘Fetal Endangerment’ Illegitimate*, 82 A.B.A. J., December 1996, at 72.
- Jessica Pearson & Nancy Thoennes, *What Happens to Pregnant Substance Abusers and Their Babies?*, 47 JUV. & FAM. CT. J., Spring 1996, at 15.
- Shona Glink, *The Prosecution of Maternal Fetal Abuse: Is This the Answer*, 1991 UNIV. ILL. L. REV. 533 (1991).
- Dorothy E. Roberts, *Punishing Drug Addicts Who Have Babies: Women of Color, Equality, and the Right to Privacy*, 104 HARV. L. REV. 1419 (1991).
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Section 2.9

Adult Memories of Child Abuse

- SCOPE:** Bibliographic resources relating to adult memories of child abuse or “repressed memory syndrome”
- STATUTES:** CONN. GEN. STATUTES (2003)
- § 52-577d Limitation of action for damages to minor caused by sexual abuse, exploitation or assault.
- COURT CASES:** (Connecticut)
- *Borawick v. Shay*, 68 F.3d 597, 606 (2d Cir. 1995), *cert. denied*, 597 U.S. 1229 (1996). “...the fact remains that the literature has not yet conclusively demonstrated that hypnosis is a consistently effective means to retrieve repressed memories of traumatic, past experiences accurately...”
 - *Henderson v. Wooley*, 230 Conn. 472, 486, 644 A.2d 1303 (1994). “... the parental immunity doctrine does not bar an action by a minor child against his or her parent for personal injuries arising out of sexual abuse, sexual assault or sexual exploitation.”
- ENCYCLOPEDIAS:**
- Charles S. Parnell, *Trial Report: Third Party Suit Against Therapists for Implanting False Memory of Childhood Molestation*, 57 Am. Jur. Trials 313 (1995).
 - Gregory G. Sarno, Annotation, *Emotional or Psychological ‘Blocking’ or Repression as Tolling Running of Statute of Limitations*, 11 A.L.R. 5th 588 (1993).
 - Russell G. Donaldson, Annotation, *Running of Limitations Against Action for Civil Damages for Sexual Abuse of Child*, 9 A.L.R. 5th 321 (1993).
- TEXTS & TREATISE:**
- INGER J. SAGATUN & LEONARD P. EDWARDS, CHILD ABUSE AND THE LEGAL SYSTEM 255 (1995).
 - ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES §20.08 (1993).
 - Marc J. Ackerman, *Sexual Abuse Memories: Repressed, False, or Fabricated*, in 1995 WILEY FAMILY LAW UPDATE ch. 1 (1995).
- LAW REVIEWS:**
- Joseph A. Spadaro, *An Elusive Search for the Truth: the Admissibility of Repressed and Recovered Memories in Light of Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 30 CONN. L. REV. 1147 (1998).
 - Elaine Song, *A New Test for Painful ‘Memories’: The 2nd Circuit Lays Down*

the Law on Hypnosis Evidence in Sex-Abuse Cases, 21 CONN. L. TRIB., November 6, 1995, at 1.

- Cheryl L. Karp, *The Repressed Memory Controversy*, 17 FAM. ADVOC., Winter 1995, at 70.
- Holly Metz, *Fact or Fantasy? the Debate Over 'Repressed Memory Syndrome' Enters the Courtroom*, 24 STUDENT LAW., December 1995, at 20.
- Cynthia Grant Bowman & Elizabeth Mertz, *What Should Courts do About Memories of Sexual Abuse? Toward a Balanced Approach*, 35 JUDGES' J., Fall 1996, at 7.
- Jacqueline Kanovitz, *Hypnotic Memories and Civil Sexual Abuse Trials*, 45 VAND. L. REV. 1185 (1992).

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Guardianship in Connecticut

A Guide to Resources in the Law Library

- “It is, indeed, the duty of judges of probate to see that infants who need guardians have them . . .” Apthorp v. Backus, 1 Kirby 407, 410 (Conn. 1788).
- “[I]t is only ‘if both parents or the sole living parent shall be so removed’ . . . that the Court of Probate is authorized to appoint a guardian of the person of a minor whose parent or parents are living.” Lewis v. Klingberg, 100 Conn. 201, 206, 123 A. 4 (1923).
- “Guardianship” means guardianship of the person of a minor, and includes: (A) The obligation of care and control; (B) the authority to make major decisions affecting the minor's education and welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment; and (C) upon the death of the minor, the authority to make decisions concerning funeral arrangements and the disposition of the body of the minor;” CONN. GEN. STAT. § 45a-604(5) (2003).

Sections in this chapter:

- § 3.1 Grounds for guardianship
- § 3.2 Types of guardianships in Connecticut
 - § 3.2a Guardians of the person of a minor
 - § 3.2a.1 Parents as guardians
 - § 3.2a.2 Temporary guardians
 - § 3.2a.3 Standby guardians
 - § 3.2a.4 Guardians and coguardians appointed by the courts
 - § 3.2b Guardian of the estate of a minor
 - § 3.2c Testamentary guardian or guardian designated by parent in event of parent’s death
 - § 3.2d Guardians of mentally retarded adults
 - § 3.2e Guardian ad litem
- § 3.3 Jurisdiction of the courts over guardianship
- § 3.4 Rights and duties of a guardian
- § 3.5 Appointment of guardians
- § 3.6 Child’s or respondent’s wishes
- § 3.7 Termination of guardianship

See Also:

Appendix P: Guardian Ad Litem in Neglect and Abuse Cases
 Appendix Q: Guardians Ad Litem and Counsel in Custody Cases
 Appendix R Subsidized guardianship and State child care subsidies
 Appendix S Guardians of persons with mental retardation
 Appendix T Grandparents' custody of grandchildren

Section 3.1

Grounds for Guardianship

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to the grounds for guardianship

DEFINITION:

- **Parents as guardians:** "The father and mother of every minor child are joint guardians of the person of the minor, and the powers, rights and duties of the father and the mother in regard to the minor shall be equal. If either father or mother dies or is removed as guardian, the other parent of the minor child shall become the sole guardian of the person of the minor." CONN. GEN. STAT. § 45a-606 (2003).
- **Guardian of the estate of a minor:** "A parent of a minor, guardian of the person of a minor or spouse of a minor shall not receive or use any property belonging to the minor in an amount exceeding ten thousand dollars in value unless appointed guardian of the estate of the minor. CONN. GEN. STATS. § 45a-631(a) (2003).
- "If any minor has no parent or guardian of his or her person, the court of probate for the district in which the minor resides may, on its own motion, appoint a guardian or coguardians of the person of the minor" CONN. GEN. STAT. § 45a-616(b) (2003).
- "If any minor has a parent or guardian, who is the sole guardian of the person of the child, the court of probate for the district in which the minor resides may, on the application of the parent or guardian of such child or of the Commissioner of Children and Families with the consent of such parent or guardian and with regard to a child within the care of the commissioner, appoint one or more persons to serve as coguardians of the child." CONN. GEN. STAT. § 45a-616(b) (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-604. Definitions
 - § 45a-606. Father and mother joint guardians
 - § 45a-616. Appointment of guardian or coguardian for minor; rights same as of sole surviving parent
 - § 45a-617. Appointment of guardian or coguardian of the person of a minor
 - § 45a-631. Limitation on receipt or use of minor's property by parent, guardian or spouse. Release

WEST KEY NUMBERS:

- *Guardian and Ward*
 - # 1-4. Guardianship in general
 - # 1. The relation in general
 - # 2. Power to control guardianship
 - # 3. What law governs
 - # 4. Guardians by nature

COURT CASES

- In Re Tayquon H., 76 Conn. App. 693, 710, 821 A.2d 796 (2003).
“Although the issues are clouded by the appointment of an attorney as well as a guardian ad litem to represent the interests of the child, S, the absence of an enumerated list of the duties of the guardian ad litem does not prevent us from resolving the issues presented by this case because we conclude that the guardian ad litem supersedes the role of the natural guardian to speak for the child's best interest in the present litigation. In contrast to a guardian of a person who has physical control of the minor or a guardian of an estate who has legal control over the minor's financial affairs, the guardian ad litem is appointed by a court and granted limited powers to represent the interest of the child in a particular court proceeding.”
- State v. Springmann, 69 Conn. App. 400, 408, 794 A.2d 1071 (2002).
"In fact, the record is clear that the state of Connecticut maintained guardianship over the victim C at all times, even if she was in the foster care of the defendant . . . It is the commissioner of children and families who is a designated guardian and not a foster parent."
- Cookson v. Cookson, 201 Conn. 229, 235, 514 A.2d 323 (1986). "In this instance, prior to judicial intervention, neither parent had an exclusive right to the custody of the children; their rights were joint and equal."
- Hao Thi Popp v. Lucas, 182 Conn. 545, 551-552, 438 A.2d 755 (1980).
"Thus, the plaintiff has a constitutional right to preserve her parental rights in the absence of a powerful countervailing state interest . . . This amounts to a presumption which the defendant must overcome. To the extent that the language in such cases as . . . *Antedomenico v. Antedomenico*, 142 Conn. 558, 562, 115 A.2d 659 (1955), which involved custody contests between biological parents, suggests a rule different from that which we articulate today for disputes involving a third party, those cases are hereby overruled."
- Antedomenico v. Antedomenico, 142 Conn. 558, 562, 115 A.2d 659 (1955). "If one parent is in default of his parental obligations, he or she may be deprived of the right to have the care and custody of a minor child, and that right may be conferred upon the other . . . The state is primarily interested in having the status of husband and wife, with joint guardianship of children, maintained. When it is disrupted, the state must exercise its duties as parens patriae in the interests of the child."
- Apthorp v. Backus, 1 Kirby 407, 410 (Conn. 1788). "It is, indeed, the duty of judges of probate to see that infants who need guardians have them . . ."

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
Chapter 3. Guardianship
§ 3:7. Types of guardianships of minors
§ 3:9. Jurisdiction over the guardianship of minor's person
§ 3:16. Probate court jurisdiction over guardianship of minor's estate
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
Chapter 12 Guardianship
§ 12.11. Grounds for guardianship

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Section 3.2

Types of Guardianships in Connecticut

§ 3.2a Guardians of the Person of a Minor

"There are two types of guardianship for minors: guardianship of the person of a minor and guardianship of the estate of a minor. A guardian of the person has the responsibility to care for the person of the minor. A guardian of the estate is required to manage the property of the minor."

Guardian of the person of a minor: "is an adult authorized by law to take physical control of and provide care for the minor. That broad authority includes making medical and personal decisions concerning the welfare of the minor. By law, the birth parents of a child born in wedlock are automatically the guardians of the person of the minor. They are entitled to and expected to exercise the care of and the control over the minor on a daily basis. They are also "joint guardians" of their minor, which means that their powers, rights, and responsibilities with respect to their minor are equal, unless altered by a court."

PROBATE COURT FREQUENTLY ASKED QUESTIONS:

<http://www.jud.state.ct.us/probate/faq.html#GUARDIANSHIPS>

Section 3.2a.1

Parents as Guardians

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to parents as guardians of minors in Connecticut

DEFINITION:

- **Mother:** “means (A) a woman who can show proof by means of a birth certificate or other sufficient evidence of having given birth to a child and (B) an adoptive mother as shown by decree of a court of competent jurisdiction or otherwise” CONN. GEN. STAT. § 45a-604(1) (2003).
- **Father:** “means a man who is a father under the law of this state including a man who, in accordance with section 46b-172, executes a binding acknowledgment of paternity and a man determined to be a father under chapter 815y;” CONN. GEN. STAT. § 45a-604(2) (2003).
- **Parent:** “means a mother as defined in subdivision (1) of this section or a ‘father’ as defined in subdivision (2) of this section” CONN. GEN. STAT. § 45a-604(3) (2003).
- **Presumption re best interest of the child to be in custody of parent:** “In any dispute as to the custody of a minor child involving a parent and a nonparent, there shall be a presumption that it is in the best interest of the child to be in the custody of the parent, which presumption may be rebutted by showing that it would be detrimental to the child to permit the parent to have custody.” CONN. GEN. STAT. § 46b-56b (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-605. Provisions construed in best interest of minor child
 - § 45a-606. Father and mother joint guardians
 - § 45a-609. Application for removal of parent as guardian.
 - Notice. Examination
 - § 45a-610. Removal of parent as guardian
 - § 45a-611. Reinstatement of parent as guardian of the person of minor.
 - § 45a-612. Visitation rights of parent removed as guardian.
 - § 45a-623. Transfer of contested proceeding to Superior Court or another judge of probate
 - § 45a-624a. Consent of parent required for designation of standby guardian.
 - Chapter 815j. Dissolution of marriage, legal separation and annulment
 - § 46b-56b. Presumption re best interest of child to be in custody of parent

LEGISLATIVE:

- 2000 Conn. Acts 75 (Reg. Sess.), effective October 1, 2000. An act

concerning protection of children in Probate Courts. Substitute House Bill No. 5716.

- 1979 Conn. Acts 460 § 4 (Reg. Sess.). An act concerning guardianship of children.

FORMS:

- Probate Court
 - PC-500. Application/Removal of guardian
 - PC-520. Order of notice, temporary custody or removal and appointment of guardian
 - PC-530. Notice/Receipt of application for removal of guardian
 - PC-560. Decree/Removal of guardian and appointment

WEST KEY NUMBERS:

- *Guardian and Ward*
 - # 4. Guardians by nature
 - # 25. Removal of guardian
 - # 26. Death of guardian

DIGESTS:

- DOWLING'S DIGEST: *Guardian and Ward*
 - § 1. In general; Appointment
- CONNECTICUT FAMILY LAW CITATIONS: *Guardian*

COURT CASES

- *In Re Crystal H.*, 32 Conn. L. Rptr. 127, 2002 WL 1336088 (Conn.Super. 2002). "The Probate Court ordered removal of the child to a distant state and the placement of the child with a non-parental guardian without his knowledge or consent. The placement of the child in a different school was a direct and necessary consequence. All three of these decisions trample on father's basic guardianship rights and responsibilities. While the decision may have been in the best interest of the child, the father had no opportunity to consider that question or take a position on it before the Probate Court appointed the temporary guardian and the child was removed to Arizona."
- *Doe v. Doe*, 244 Conn. 403, 455, 710 A.2d 1297 (1998). "As these authorities make clear, the presumption does not mean that the nonparent must, in order to rebut it, prove that the parent is unfit. It means that the parent has an initial advantage, and that the nonparent must prove facts sufficient to put into issue the presumed fact that it is in the child's best interest to be in the parent's custody. Once those facts are established, however, the presumption disappears, and the sole touchstone of the child's best interests remains irrespective of the parental or third party status of the adults involved. In that instance, then, neither adult - the parent or the third party - enjoys any advantage or suffers any disadvantage as a result of his or her parental or third party status."
- *Bristol v. Brundage*, 24 Conn. App. 402, 405, 589 A.2d 1 (1991). This statute [§ 46b-56b] was enacted to counteract the holding of *McGaffin v. Roberts* [below] . . . which held that 45-43 (now 45a-606) did not create a presumption that a surviving parent is entitled to preference in a custody dispute."
- *McGaffin v. Roberts*, 193 Conn. 393, 407, 479 A.2d 176 (1984), *cert. denied*, 470 U.S. 1050, 105 S.Ct. 1747, 84 L.Ed. 2d 813 (U.S. 1985). "Thus the factor of parenthood is to be properly considered in the aggregate of all those circumstances that a trial court is entitled to consider in exercising its broad discretion in deciding what is in the best

interests of a minor child.”

- Posey v. Yandell, 26 Conn. Supp. 320, 323, 222 A.2d 747 (1966).
“Upon the death of the mother, the plaintiff became the sole guardian of the child Carolyn. It follows that the plaintiff has a prior right to custody unless the circumstances are such that to give it to him would not be for the best interest of the child.”
- Antedomenico v. Antedomenico, 142 Conn. 558, 562, 115 A.2d 659 (1955). “If one parent is in default of his parental obligations, he or she may be deprived of the right to have the care and custody of a minor child, and that right may be conferred upon the other The state is primarily interested in having the status of husband and wife, with joint guardianship of children, maintained. When it is disrupted, the state must exercise its duties as *parens patriae* in the interests of the child.”

ENCYCLOPEDIAS:

- 39 AM JUR 2d *Guardian and Ward* (1999).
 - § 5. Parents as joint guardians
 - § 6. Rights of father
 - § 7. Rights of mother
 - § 8. Rights of other relatives
 - § 9. Incidents of guardianship by nature
 - § 10. Transfer of guardianship or custody of child
- 39 C.J.S. *Guardian and Ward* (1976).
 - § 6. Classes or kinds of guardians. Natural guardians

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
 - Chapter 3. Guardianship
 - § 3.2. Guardianship of minors. Parent and child—statutory guardians of the person, custody and control, termination of parental rights, statutory parent
 - § 3:3. —Right to services and earnings, effects of emancipation
 - § 3:4. —Duty to support
 - § 3:10. Removal of parents or other guardians of minor’s person, temporary custody orders, visitation and reinstatement rights, appointment of guardian or co-guardian
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN (2D ed. 1994).
 - Chapter 2. Child custody
 - § 2.15. Preference of the natural parent(s) over others; generally
- 8 ARNOLD H. RUTKIN ET AL., CONNECTICUT PRACTICE SERIES, FAMILY LAW AND PRACTICE WITH FORMS (2000).
 - Chapter 42. Child Custody and Visitation
 - § 42.1. Parental custody rights—generally
 - § 42.2. Right of unmarried or non-cohabiting parents
 - § 44.19. Death of custodial parent
- PETER L. COSTAS, MANAGING ED., LAWYERS’ DESKBOOK: A REFERENCE MANUAL, (2d ed. 2000).
 - Lynn B. Cochrane, *Child Protection*. “Basic Principles: Guardianship of the Person of the Minor in Probate Court,” pp. XVII-26, 28-30.

WEB SITES:

<http://www.jud.state.ct.us/probate/faq.html#GUARDIANSHIPS>

COMPILER:

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Section 3.2a.2

Temporary Guardians

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to standby guardians in Connecticut

TREATED

ELSEWHERE:

- Parents as guardians § 3.2a.1
- Standby guardians § 3.2a.2

DEFINITIONS:

- **Temporary guardian:** “(a) Any parent or guardian of the person of a minor may apply to the court of probate for the district in which the minor lives for the appointment of a temporary guardian of the person to serve for no longer than one year if the appointing parent or guardian is unable to care for the minor for any reason including, but not limited to, illness and absence from the jurisdiction. The temporary guardian will cease to serve when the appointing parent or guardian notifies the probate court and the temporary guardian to that effect.” CONN. GEN. STAT. § 45a-622(a) (2003).
- **Rights and obligations** of the temporary guardian: “The rights and obligations of the temporary guardian shall be those described in subdivisions (5) and (6) of section 45a-604.” CONN. GEN. STAT. § 45a-622(b) (2003).
- **Liability** of the temporary guardian: “A temporary guardian is not liable as a guardian pursuant to section 52-572.” CONN. GEN. STAT. § 45a-622(b) (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-605. Provisions construed in best interest of minor child
 - § 45a-622. Appointment of temporary guardian. Application. Rights and obligations

LEGISLATIVE:

- 1999 Conn. Acts 84 § 9 (Reg. Sess.). “Any person appointed as guardian of the person of a minor pursuant to sections 45a-603 to 45a-624g, inclusive, of the general statutes shall report at least annually to the probate court which appointed the guardian regarding the condition of the minor.” Substitute House Bill No. 6685.

FORMS:

- Probate Court
 - Form PC-504. Application, appointment of temporary guardian
 - Form PC-564. Decree, appointment of temporary guardian

CASES:

- In Re Crystal H., 32 Conn. L. Rptr. 127, 2002 WL 1336088 (Conn.Super. 2002). “Her [the mother’s] decision to temporarily

relinquish both her custodial and guardianship rights temporarily should not adversely impact the father's rights.”

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM , INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
Chapter 3. Guardianship
§ 3:7. Types of guardians of minors
- 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
Chapter 12. Guardianship
§ 12.05. Temporary guardianship
- PETER L. COSTAS, MANAGING ED., LAWYERS’ DESKBOOK: A REFERENCE MANUAL, (2d ed. 2000).
 - ❑ Lynn B. Cochrane, *Child Protection*. "Basic Principles: Guardianship of the Person of the Minor in Probate Court," p. XVII-27

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Section 3.2a.3

Standby Guardians

A Guide to Resources in the Law Library

SCOPE:

- Bibliographic resources relating to standby guardians in Connecticut

TREATED ELSEWHERE:

- [Parents as guardians § 2a.1](#)

DEFINITIONS:

- **Standby guardian** of minor: “A parent or guardian, as principal, may designate a standby guardian of a minor in accordance with the provisions of sections 45a-624 to 45a-624g, inclusive. Such designation, in a form as provided in section 45a-624b, shall take effect upon the occurrence of a specified contingency, including, but not limited to, the mental incapacity, physical debilitation or death of the principal, provided a written affidavit statement signed under penalty of false statement has been executed pursuant to section 45a-624c that such contingency has occurred. A designation of a standby guardian shall be in writing and signed and dated by the principal with at least two witnesses. The principal shall provide a copy of such designation to the standby guardian.” CONN. GEN. STAT. § 45a-624 (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-622. Appointment of temporary guardian. Application. Rights and obligations
 - § 45a-624. Designation of standby guardian of minor
 - § 45a-624a. Consent of parents required for designation of standby guardian
 - § 45a-624b. Form of designation of standby guardian
 - § 45a-624c. Written affidavit that designation of standby guardian in full force and effect
 - § 45a-624d. Authority of standby guardian
 - § 45a-624e. Authority of standby guardian after death of principal
 - § 45a-624f. Revocation of designation of standby guardian
 - § 45a-624g. Probate court to resolve disputes concerning designation of standby guardian

FORMS:

- CONN. GEN. STAT. (2003)
 - § 45a-624b. Form of designation of standby guardian
 - § 45a-624c. Written affidavit that designation of standby guardian in full force and effect

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM, INCAPACITY, POWERS OF

ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).

Chapter 3. Guardianship

§ 3:7. Types of guardians of minors

§ 3:23. Standby guardians

- PETER L. COSTAS, MANAGING ED., *LAWYERS' DESKBOOK: A REFERENCE MANUAL*, (2d ed. 2000).
 - ❑ Lynn B. Cochrane, *Child Protection*. "Basic Principles: Guardianship of the Person of the Minor in Probate Court," p. XVII-27

COMPILER:

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Section 3.2a.4

Guardians and Coguardians Appointed by the Courts

SCOPE:

- Bibliographic resources relating to co-guardians in Connecticut

TREATED ELSEWHERE:

- Parents as guardians § 3.2a.1
- Temporary guardians § 3.2a.2
- Standby guardians § 3.2a.3

DEFINITIONS:

- “It is, indeed, the duty of judges of probate to see that infants who need guardians have them . . .” Apthorp v. Backus, 1 Kirby 407, 410 (Conn. 1788).
- “Indeed the law places the guardian *in loco parentis*, and means that he shall foster the ward with parental anxiety.” Adams’ Appeal from Probate, 38 Conn. 304, 306 (1871).
- **Guardian and Coguardians:**

Without parent: “If any minor has no parent or guardian of his or her person, the court of probate for the district in which the minor resides may, on its own motion, appoint a guardian or coguardians of the person of the minor, taking into consideration the standards provided in section 45a-617. Such court shall take of such guardian or coguardians a written acceptance of guardianship and, if the court deems it necessary for the protection of the minor, a probate bond.” CONN. GEN. STAT. §45a-616(a) (2003).

With only one parent: “If any minor has a parent or guardian, who is the sole guardian of the person of the child, the court of probate for the district in which the minor resides may, on the application of the parent or guardian of such child or of the Commissioner of Children and Families with the consent of such parent or guardian and with regard to a child within the care of the commissioner, appoint one or more persons to serve as coguardians of the child The court shall take of such guardian or coguardians a written acceptance of guardianship, and if the court deems it necessary for the protection of the minor, a probate bond. CONN. GEN. STAT. § 45a-616(b) (2003).

- **Rights and obligations** of the guardian or coguardian: “shall be those described in subdivisions (5) and (6) of section 45a-604 and shall be shared with the parent or previously appointed guardian of the person of the minor. The rights and obligations of guardianship may be exercised independently by those who have such rights and obligations.” CONN.

GEN. STAT. § 45a-616(d) (2003).

- **Powers:** “A parent of a minor, guardian of the person of a minor or spouse of a minor shall not receive or use any property belonging to the minor in an amount exceeding ten thousand dollars in value unless appointed guardian of the estate of the minor, except that such parent, guardian or spouse may hold property as a custodian under the provisions of sections 45a-557 to 45a-560b, inclusive, without being so appointed.” CONN. GEN. STAT. § 45a-631(a) (2003).
- **Factors** used in choosing: “When appointing a guardian or coguardians of the person of a minor, the court shall take into consideration the following factors: (1) The ability of the prospective guardian or coguardians to meet, on a continuing day to day basis, the physical, emotional, moral and educational needs of the minor; (2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference; (3) the existence or nonexistence of an established relationship between the minor and the prospective guardian or coguardians; and (4) the best interests of the child.” CONN. GEN. STAT. § 45a-617 (2003).
- **Disputes:** “In the event of a dispute between guardians or between a coguardian and a parent, the matter may be submitted to the court of probate which appointed the guardian or coguardian.” CONN. GEN. STAT. § 45a-616(d) (2003).
- **Death:** “Upon the death of the parent or guardian, any appointed guardians of the person of a minor child shall become the sole guardians or coguardians of the person of that minor child.” CONN. GEN. STAT. § 45a-616(e) (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-616. Appointment of guardian or coguardian for minor; rights same as of sole surviving parent
 - § 45a-617. Appointment of guardian or coguardian of the person of a minor
 - § 45a-631. Minor's property to be received or used only by guardian of estate. Release

LEGISLATIVE:

- 2000 Conn. Acts 78 (Reg. Sess.). An act concerning the receipt or use of property belonging to a minor. House Bill No. 5880.

COURT RULES:

- CONNECTICUT PROBATE PRACTICE BOOK (4th ed. Rev. 2000).
 - Rule 5. Guardians
 - 5.2. Appointment of guardian of the person
 - 5.3. Bond for guardian of the person

FORMS:

- Probate Court
 - PC-500. Application for removal of guardian
 - PC-501. Application for immediate temporary custody
 - PC-502. Application for temporary custody
 - PC-504. Application, appointment of temporary guardian
 - PC-510. Custodian's affidavit for immediate temporary custody
 - PC-520. Order of notice, temporary custody or removal and appointment of guardian

PC-530. Notice, receipt of application for removal and appointment of guardian
 PC-531. Citation and return for custody/removal of guardian
 PC-550. Physician's certificate, immediate temporary custody
 PC-560. Decree, removal of guardian and appointment
 PC-561. Decree, immediate temporary custody
 PC-562. Decree, temporary custody
 PC-564. Decree, appointment of temporary guardian
 PC-610. Affidavit, temporary custody, removal, termination or adoption

CASES:

- Holcomb v. Holcomb, No. FA02-0124703S, Judicial District of New London at Norwich (Mar. 31, 2003), 2003 WL 1908228, 2003 Conn. Super. LEXIS 961. "The parties are commended for assuming guardianship responsibilities for Stephen. As they implicitly acknowledge, the court cannot consider the guardianship in formulating its orders since the parties have no legal duty to support Stephen."
- Favrow v. Vargas, 231 Conn. 1, 18, 647 A.2d 731 (1994). "A guardian of a minor child has no legal obligation of support for that child. This conclusion is compelled by our statutes regarding guardianship, by the common law background of those statutes, and by the policy undergirding those statutes and that common law."
- Bristol v. Brundage, 24 Conn. App. 402, 408, 589 A.2d 1 (1991). "We therefore remand this case to the trial court for further proceedings in light of our determination that the defendant should not have been appointed as coguardian."
- Miller v. Miller, 158 Conn. 217, 220, 258 A.2d 89 (1969), cert. den. 396 U.S. 940, 90 S.Ct. 374, 24 L.Ed. 2d 241. "A guardian of the person is entitled to the custody of his ward"
- Holbrook v. Brooks, 33 Conn. 347, 351 (1866). "A guardian is bound to use reasonable and prudent care in the management of his ward's property; and the law justly requires the utmost fairness in all his dealings with the ward. He shall under no circumstances be permitted to reap any personal advantage from the use of the ward's money or other property, but all the income and profits thereof shall be faithfully accounted for. And when land is sold at private sale, as in this case, he sells at his peril, if he sells for less than a fair price."

WEST KEY NUMBERS:

- *Guardian and Ward*
 # 28-74. Custody and care of ward's person and estate
 # 116-136. Actions

DIGESTS:

- ALR INDEX: Guardian and Ward

ENCYCLOPEDIAS:

- 39 AM. JUR. 2d *Guardian and Ward* (1999).
 §§ 21, 22. Guardianship by judicial appointment
 §§ 34-79. Judicial appointment of guardian
 §§ 93-185. General powers and duties of guardians and conservators
 §§ 186-199. Actions
 §§ 225-245. Liability of guardian and sureties
- 39 C.J.S. *Guardian & Ward* (1976).
 §§ 55-68. Custody and care of ward's person

§§ 170-185. Actions

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM , INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2003).
Chapter 3. Guardianship
§ 3:11. Powers and duties of guardian of minor's person
- PETER L. COSTAS, MANAGING ED., LAWYERS' DESKBOOK: A REFERENCE MANUAL, (2d ed. 2000).
 - ❑ Lynn B. Cochrane, *Child Protection*. "Basic Principles: Guardianship of the Person of the Minor in Probate Court," pp. XVII-27-28

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Table 7 Commitment of Child or Youth

Statutes	(j) Upon finding and adjudging that any child or youth is uncared-for, neglected or dependent, the court may commit such child or youth to the Commissioner of Children and Families. Such commitment shall remain in effect until further order of the court pursuant to the provisions of subsection (k) of this section, provided such commitment may be revoked or parental rights terminated at any time by the court, or the court may vest such child's or youth's care and personal custody in any private or public agency which is permitted by law to care for neglected, uncared-for or dependent children or youth or with any person or persons found to be suitable and worthy of such responsibility by the court. The court shall order specific steps which the parent must take to facilitate the return of the child or youth to the custody of such parent. The commissioner shall be the guardian of such child or youth for the duration of the commitment "CONN. GEN. STAT. § 46b-129(j) (2003).
Cases	<ul style="list-style-type: none"> • “Upon a judicial determination that the child is uncared for, neglected or dependent, the Superior Court has available to it three possible options regarding custody of that child: (1) to commit the child to the custody of the petitioner; (2) to vest such child's care and custody in a third party until the child reaches the age of eighteen; or (3) to permit the natural parent to retain custody and guardianship of the child with or without protective supervision by the department.” <u>In Re Stanley D.</u>, 45 Conn. App. 606, 610, 697 A.2d 370 (1997). • “Our review of the relevant statutes leads us to conclude that an adjudication of neglect relates to the status of the child and is not necessarily premised on parental fault. A finding that the child is neglected is different from finding who is responsible for the child's condition of neglect.” <u>In Re David L.</u>, 54 Conn. App. 185, 191, 733 A.2d 897 (1999).
Jurisdiction of the courts	<ul style="list-style-type: none"> • Application for commitment of a mentally ill child to a hospital for mental illness shall be made to the court of probate in the district in which such child resides, or when his or her place of residence is out of state or unknown, the district in which he or she may be at the time of filing the application, except in cases where it is otherwise expressly provided by law. In any case in which the child is hospitalized under sections 17a-75 to 17a-83, inclusive, and an application for the commitment of such child is filed in accordance with the provisions of sections 17a-75 to 17a-83, inclusive, the jurisdiction shall be vested in the court of probate for the district in which the hospital where such child is a patient is located.” CONN. GEN. STAT. § 17a-76(a) (2003). • “Any application for commitment of any child under sections 17a-75 to 17a-83, inclusive, shall be transferred from the court of probate where it has been filed to the superior court of appropriate venue upon motion of any legal party except the petitioner.” CONN. GEN. STAT. § 17a-76(b) (2003).

ALR Annotation	<ul style="list-style-type: none"> Janet Boeth Joners, Annotation, <i>Truancy As Indicative Of Delinquency Or Incurability, Justifying Commitment Of Infant Or Juvenile</i>, 5 ALR4th 1211 (1981).
Text & Treatises	<ul style="list-style-type: none"> RALPH H. FOLSOM & GAYLE B. WILHELM , INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002). Chapter 1. Commitments and placements § 1:18. Commitment of mentally ill children § 1:21. Commitment in juvenile proceedings; termination of parental rights, statutory parent
Pamphlets:	<ul style="list-style-type: none"> STATEWIDE LEGAL SERVICES, IF DCF IS YOUR LEGAL GUARDIAN http://www.larcc.org/pamphlets/children_family/dcf_guardian.htm

Table 8 Sovereign Immunity and State Officials

<p style="text-align: center;"><u>Prigge v. Ragaglia</u>, 265 Conn. 338, 828 A.2d 542 (2003)</p>	
p. 340	“The plaintiffs brought this action, seeking monetary damages against the defendants both in their official and individual capacities, and also seeking injunctive relief, alleging that the defendants had discriminated against them in certain underlying child custody proceedings.”
p. 349	As to the plaintiffs' claims for money damages, this issue is controlled by our decision today in <i>Miller v. Egan</i> , 265 Conn. 301, 828 A.2d 549 (2003), in which we held that the exception to the doctrine of sovereign immunity for actions by state officers in excess of their statutory authority applies only to actions seeking declaratory or injunctive relief, not to actions for money damages. When a plaintiff brings an action for money damages against the state, he must proceed through the office of the claims commissioner pursuant to chapter 53 of the General Statutes, §§ 4-141 through 4-165 . Otherwise, the action must be dismissed for lack of subject matter jurisdiction under the doctrine of sovereign immunity. In the present case, the plaintiffs have not received permission from the office of the claims commissioner to bring their claims for money damages against the state. Therefore, the doctrine of sovereign immunity bars those claims.

§ 3.2b Guardian of the Estate of a Minor

SCOPE:

- Bibliographic resources relating to guardianships of minors in Connecticut

TREATED ELSEWHERE: DEFINITION:

- Guardian of the person of a minor §§ 3.2a.1 – 3.2a.4 *supra*
- “A parent of a minor, guardian of the person of a minor or spouse of a minor shall not receive or use any property belonging to the minor in an amount exceeding ten thousand dollars in value unless appointed guardian of the estate of the minor. Such parent, guardian or spouse may hold property as a custodian under the provisions of sections 45a-557 to 45a-560b, inclusive, without being so appointed.” CONN. GEN. STATS. § 45a-631(a) (2003).
- “When a minor is entitled to property, the court of probate for the district in which the minor resides may assign a time and place for a hearing on the appointment of a guardian of the estate of the minor.” CONN. GEN. STATS. § 45a-629(a) (2003).
- “If the court finds that there is no guardian of the estate of the minor, it may appoint one or both of the parents or any guardian of the person of the minor to be guardian of his or her estate.” CONN. GEN. STATS. § 45a-629(b) (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part III. Guardians of the person of a minor
 - § 45a-629. Appointment of guardian for minor’s estate
 - § 45a-630. Application for appointment of guardian of the estate of a minor
 - § 45a-631. Minor’s property to be received or used only by guardian of estate. Release
 - § 45a-632. Appointment of guardian of estate of non-resident minor
 - § 45a-633. Lease of minor’s real estate by guardian or coguardian of estate
 - § 45a-634. Inventory of ward’s property by guardian of estate
 - § 45a-635. Removal by foreign guardian of ward’s personal property
 - § 45a-636. Removal by foreign guardian of proceeds of sale of ward’s real estate
 - § 45a-637. Guardians of estate of minors may make partition
 - § 45a-638. Court may order guardian to convey real property

LEGISLATIVE:

- 2000 CONN. ACTS 78 (Reg. Sess.), effective 10/1/2000. An act concerning the receipt or use of property belonging to a minor. House Bill No. 5880.
- 1979 CONN. ACTS 84 (Reg. Sess.), effective October 1, 1999. An act concerning probate.

COURT RULES

- CONNECTICUT PROBATE PRACTICE BOOK (4th ed. Rev. 2000).
Rule 5.4. Appointment and qualifications of guardian of the estate
Rule 5.5. Bond of guardian of the estate
Rule 5.6. Notice of hearing on appointment of guardian of the estate
Rule 5.7. Inventory and accounting by guardian of the estate

FORMS:

- Probate Court
PC-503. Application for appointment of guardian of estate
PC-563. Decree for appointing guardian of estate
PC-580. Receipt and release of guardian of estate

WEST KEY NUMBERS:

- *Guardian and Ward*
28-74. Custody and care of ward's person and estate
116-136. Actions

DIGESTS:

- ALR INDEX: Guardian and Ward

COURT CASES

- *Caron v. Adams*, 33 Conn. App. 673, 694, 638 A.2d 1073 (1994).
"General Statutes 45a-629 provides that if a minor does not have a guardian of his estate and is entitled to property, the court may appoint the parents or guardian to be guardian of the estate. If any of these are not proper persons, the court may appoint any proper person chosen by the minor, if the minor is over the age of twelve. If the minor does not or cannot choose, or makes an improper choice, 'the court of probate shall appoint some proper person or persons, who, as guardian of the estate of the minor, shall have charge of all the minor's property, whether acquired before or after the guardian's appointment, but shall have no control over his person.' General Statutes 45a-629(b)."
- *Fitzgerald v. Fitzgerald*, 169 Conn. 147, 152, 362 A.2d 889 (1975).
"The primary duty of the parent to support his minor children, if he is able to do so, is not relieved by the fact that they may have income from a trust created in their favor."
- *Lametta v. Connecticut Light & Power Co.*, 139 Conn. 218, 220, 92 A.2d 731 (1952). "Under our common law an infant may sue either by next friend or by guardian, if one has been appointed. The powers and responsibilities of each in prosecuting a suit for the infant are the same."
- *Rutkowski v. Connecticut Light & Power Co.*, 100 Conn. 49, 55, 123 A. 25 (1923). "This claim is based on the assertion that this plaintiff, only five years old, will not be entitled to the sum awarded to her until she shall come of age. There is no legal ground for this assertion. In fact this plaintiff was entitled from the date of the judgment to the immediate possession and enjoyment of the full amount of damages allowed to her, although her rights must be exercised by a guardian of her estate."
- *Williams v. Cleaveland*, 76 Conn. 426, 430, 56 A. 850 (1904). "As natural guardian he was entitled to neither the possession nor control of his son's property, either at common law . . . or by statute"

ENCYCLOPEDIAS:

- 39 AM. JUR. 2d *Guardian and Ward* (1999).
§§ 107-144. Custody and control of ward's property, generally
§§ 145-158. Investment and deposit of funds
§§ 159-185. Sales and purchase of property
§§ 246-255. Trust relation between guardian and ward

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM , INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
Chapter 3. Guardianship
 - § 3:7. Types of guardianship of minors
 - § 3:15. Necessity for guardianship of minor's estate
 - § 3:16. Probate court jurisdiction over guardianship of minor's estate
 - § 3:17. Appointment of guardian of the minor's estate
- PETER L. COSTAS, MANAGING ED., LAWYERS' DESKBOOK: A REFERENCE MANUAL, (2d ed. 2000).
 - ❑ Lynn B. Cochrane, *Child Protection*. "Basic Principles: Guardianship of the Person of the Minor in Probate Court," pp. XVII-28.

LAW REVIEWS:

- Kyle A. Orsini, Note, *Guardian Of A Minor's Estate: How Far Can The Guardian Go In Expending The Minor's Money*, 8 CONNECTICUT PROBATE LAW JOURNAL 275 (1994).

COMPILER:

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§ 3.2c Testamentary Guardian or Guardian Designated by Parent in Event of Parent's Death

SCOPE:

- Bibliographic resources relating to guardianships of minors in Connecticut

TREATED ELSEWHERE:

- Guardians of the person of a minor §§ 3.1a – 3.1d *supra*
- Guardian of the estate of a minor § 3.2

DEFINITION:

- **Testamentary guardian:** “The parent of an unmarried minor, except a parent who has been removed as guardian of the person of the minor, may by will or other writing signed by the parent and attested by at least two witnesses appoint a person or persons as guardian or coguardians of the person of such minor, as guardian or coguardians of the estate, or both, to serve if the parents who are guardians of the minor are dead. If two or more instruments, whether by will or other writing, contain an appointment, the latest effective appointment made by the last surviving parent has priority. Such appointment shall not supersede the previous appointment of a guardian made by the court of probate having jurisdiction. CONN. GEN. STAT. § 45a-596(a) (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
Chapter 802h. Protected persons and their property
Part II. Guardians of the person of a minor
§ 45a-596. Testamentary guardian or coguardian

LEGISLATIVE:

- 2000 CONN. ACTS 76 § 1 (Reg. Sess.). An act concerning probate matters. Substitute House Bill 5782.

CASES:

- *In re Joshua S.*, 260 Conn. 182, 205, 794 A.2d 996 (2002). "All of the foregoing cases speak to a liberty right that has its basis in an ongoing relationship between parent and child. In this case, however, this special relationship no longer exists; what remains is a predeath statement by the parents of strong preference for the future regarding who should be guardians for their children. The Ps do not cite and, indeed, we have not discovered, any authority to support the proposition that this fundamental liberty interest of parents survives the death of the parents, much less that it may be passed to testamentary guardians who have had no previous relationship with the child, other than as neighbors. In the case before us, because this special parent-child relationship no longer exists, this constitutionally protected interest, likewise, no longer exists. Therefore, we are not required to give the same deference to a predeath statement of preference as we would were this a decision concerning a child made by a living parent."
- *Bristol v. Brundage*, 24 Conn. App. 402, 406, 589 A2d 1 (1991). "We hold that 45a-596 (a) should be interpreted as mandating the appointment of the sole surviving parent's testamentary choice of a

guardian because it should be presumed that the best interests of the child are served by that appointment. This presumption, like that of 46b-56b, may be rebutted only by a showing that it would be detrimental to the child to permit the named testamentary guardian to serve as such.”

ENCYCLOPEDIAS:

- 39 AM JUR 2d *Guardian and Ward* (1999).
§§ 11-20. Testamentary guardianship
- Annotation, *Function, Power, And Discretion Of Court Where There Is Testamentary Appointment Of Guardian Of Minor*, 67 ALR2d 803 (1959).

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
Chapter 3. Guardianship
§ 3:5. Parent and child—designation of guardian by parent in event of parent’s death
§ 3:7. Types of guardianships of minors
§ 3:8. Testamentary guardians
- 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
Chapter 12. Guardianship
§ 12.09. Testamentary guardianship
- PETER L. COSTAS, MANAGING ED., LAWYERS’ DESKBOOK: A REFERENCE MANUAL, (2d ed. 2000).
 - ❑ Lynn B. Cochrane, *Child Protection*. "Basic Principles: Guardianship of the Person of the Minor in Probate Court," pp. XVII-28.

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Table 9 Parental appointment of guardian in event of parent's death

CONN. GEN. STAT. § 45a-596 (2003)	
(a)	The parent of an unmarried minor, except a parent who has been removed as guardian of the person of the minor, may by will or other writing signed by the parent and attested by at least two witnesses appoint a person or persons as guardian or coguardians of the person of such minor, as guardian or coguardians of the estate, or both, to serve if the parents who are guardians of the minor are dead. If two or more instruments, whether by will or other writing, contain an appointment, the latest effective appointment made by the last surviving parent has priority. Such appointment shall not supersede the previous appointment of a guardian made by the court of probate having jurisdiction.
(b)	The ward of such a guardian may, when he or she is over the age of twelve, apply to the court of probate in which such ward resides, for the substitution of a guardian or coguardians of the person to supersede the appointed guardian. The court of probate may, upon such application and hearing, substitute the guardian or coguardians chosen by the ward to be the guardian or coguardians of the person of the ward after consideration of the standards set forth in section 45a-617.
(c)	A parental appointment becomes effective when the guardian's written acceptance is filed in the court in which the nominating instrument is probated, or, in the case of a nontestamentary nominating instrument, in the court for the probate district where the minor resides. Any guardian or coguardians appointed pursuant to this section shall receive the appointment subject to the control of the court of probate and subject to the provisions and restrictions to which the last surviving parent, as guardian, was subject [in the hands of the parent] at the time of [his] such parent's decease. If the court deems it necessary for the protection of the minor, a guardian or coguardians of the person shall furnish a probate bond. A guardian or coguardians of the estate shall furnish a probate bond. Upon such acceptance of guardianship or furnishing such bond, the guardian or coguardians shall have the same power over the person and estate of such minor as guardians appointed by the court of probate.

§ 3.2d Guardians of Mentally Retarded Adults

SCOPE:

- Bibliographic resources relating to guardians of mentally retarded adults

DEFINITIONS:

- **Plenary guardian of a mentally retarded person:** “means a person, legally authorized state official, or private nonprofit corporation, except a hospital or nursing home as defined in section 19a-521, appointed by a court of probate pursuant to the provisions of sections 45a-668 to 45a-684, inclusive, to supervise all aspects of the care of an adult person, as enumerated in subsection (d) of section 45a-677, for the benefit of such adult, who by reason of the severity of his mental retardation, has been determined to be totally unable to meet essential requirements for his physical health or safety and totally unable to make informed decisions about matters related to his care.” CONN. GEN. STAT. § 45a-669(a) (2003)
- **Limited guardian of a mentally retarded person:** “means a person, legally authorized state official, or a private nonprofit corporation, except a hospital or nursing home as defined in section 19a-521, appointed by a court of probate pursuant to the provisions of sections 45a-668 to 45a-684, inclusive, to supervise certain specified aspects of the care of an adult person, as enumerated in subsection (d) of section 45a-677, for the benefit of such adult, who by reason of the severity of his mental retardation, has been determined to be able to do some, but not all, of the tasks necessary to meet essential requirements for his physical health or safety or to make some, but not all, informed decisions about matters related to his care.” CONN. GEN. STAT. § 45a-669(c) (2003)

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part V. Guardians of mentally retarded persons
 - § 45a-668. Continuation of service of persons appointed as guardians or limited guardians of mentally retarded persons prior to October 1, 1982.
 - § 45a-669. Definitions
 - § 45a-670. Application for guardianship
 - § 45a-671. Hearing. Notice requirements
 - § 45a-672. Notice of hearing
 - § 45a-673. Appointment of counsel. Payment of cost for indigent person
 - § 45a-674. Hearing for appointment of guardian. Evidence. Report by mental retardation assessment team. Cross-examination of witnesses. Payment of fees for assessment team
 - § 45a-675. Right of respondent to be at hearing
 - § 45a-676. Appointment of plenary guardian or limited guardian by court. Written acceptance of

guardianship. Probate bond. Findings of court.
 Appointment of employee of Department of Mental
 Retardation as plenary guardian or limited guardian
 § 45a-677. Powers and duties of plenary or limited
 guardian. Report. Transfer of file
 § 45a-678. Removal of plenary or limited guardian
 § 45a-679. Conflicts between plenary guardian, limited
 guardian, conservator of the estate or person and
 temporary conservator to be resolved by Probate
 Court
 § 45a-680. Appointment of standby plenary guardian or
 standby limited guardian. Probate bond. Duties.
 Confirmation by court.
 § 45a-681. Review of guardianship or limited guardianship
 of mentally retarded person by court
 § 45a-682. Application for temporary limited guardian.
 Notice and hearing. Appointment
 § 45a-683. Immunity from civil liability of plenary
 guardian, temporary limited guardian or limited
 guardian of a mentally retarded person
 § 45a-684. Payment of expenses and fees of proceeding for
 appointment of guardian of mentally retarded person

FORMS:

- Probate Court
 - PC-700. Application for guardianship of the mentally retarded
 - PC-720. Order of notice, guardianship of the mentally retarded
 - PC-722. Order of notice of hearing and return, appointment of
guardian of the mentally retarded
 - PC-730. Citation and return, guardianship of the mentally retarded
 - PC-760. Decree, appointment of guardian of mentally retarded
 - PC-763. Decree, review proceeding, appointment of guardian of the
mentally retarded
 - PC-763A. Order, review, proceeding, appointment of guardian of
the mentally retarded
 - PC-770. Assessment team evaluation, guardianship of the mentally
retarded
 - PC-771. Guardian's report of guardianship of the mentally retarded
 - PC-772. Psychologist's report, placement of mentally retarded
 - PC-773. Notice of hearing, appointment of guardian of mentally
retarded, review hearing

CASES:

- Carney v. Federal Express Corp., No. CV02 0467894, Judicial District
of New Haven at New Have (Mar. 3, 2003), 2003 WL 1228080, 2003
Conn. Super. LEXIS 619.
 "Because of the special affinity existing between parent and child,
 a parent of a mentally retarded adult should enjoy the same legally
 protected rights and status as the parent of a minor. Thus, a father
 has sufficient standing as a parent to appeal from a decision of a
 Probate Court denying him the appointment of the guardianship of
 his adult daughter who is determined to be incompetent." (p. 273)

 "While the court acknowledges that there is some appeal in
 recognizing a claim for damages by a parent of a mentally
 handicapped adult, the court concludes that the wiser judicial

policy is not to recognize this type of claim. The cause of action asserted is a form of third-party liability of the defendants. That is, the parent seeks to recover from the defendants, not for tortious harms that the defendants inflicted directly on her, but for financial and emotional harms she alleges to have suffered as a result of the defendants' tortious conduct committed against another with whom she has close relationship, namely, her son.” (p. 274)

- Oller v. Oller-Chiang, 230 Conn. 828, 831-832, 646 A.2d 822 (1994). “More specifically, we address the following principal issues: (1) whether the act requires that the respondent be present at any court hearing concerning the appointment of a guardian; (2) whether the respondent may waive his or her presence and, if so, the necessary requirements for such a waiver; and (3) whether, in determining what is in the best interests of the respondent, the judge must ascertain the respondent's preference as to who should be his or her guardian.”
- Buchholz’s Appeal from Probate, 9 Conn. App. 413, 420, 519 A.2d 615 (1987). “Because of the special affinity existing between parent and child, a parent of a mentally retarded adult should enjoy the same legally protected rights and status as the parent of a minor.”

WEST KEY NUMBERS:

- *Mental Health*
101-196. Guardianship in general
#138. Hearing and determination. Presence of disordered person

ENCYCLOPEDIAS:

- Peter G. Guthrie, Annotation, *Priority And Preference In Appointment Of Conservator Or Guardian For An Incompetent*, 65 ALR3d 911 (1975).
- Annotation, *Mental Condition Which Will Justify The Appointment Of Guardian, Committee, Or Conservator Of The Estate For An Incompetent Or Spendthrift*, 9 ALR3d 774 (1966).

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM , INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
Chapter 3. Guardianship
§3:1. Plenary and limited guardians for mentally retarded adults

LAW REVIEWS:

- Michael Dolan, Note, *Do Connecticut’s Conservator Statutes Possess The Necessary Due Process Guarantees?* 9 CONNECTICUT PROBATE LAW JOURNAL 297 (1995).

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§ 3.2e Guardian ad litem

SCOPE:

Bibliographic resources relating to the role of the guardian ad litem including circumstances warranting appointment, termination or removal, and the distinction between the role of a guardian ad litem and that of an attorney.

DEFINITION:

“The term **Guardian ad litem** shall mean a person appointed by the court during any proceeding in which a minor child, undetermined or unborn or class of such person, a person whose identity or address is unknown, or an incompetent person is a party, to represent and protect the interests of such parties.” CONNECTICUT PROBATE PRACTICE BOOK Rule 1.1.09.

STATUTES:

CONN. GEN. STAT. (2003)

- § 45a-132. Appointment of guardian ad litem for minors and incompetent, undetermined and unborn persons.
- § 45a-620. Appointment of counsel. Appointment of Guardian ad litem to speak on behalf of best interests of minor. (*Probate Court*)
- § 45a-621. Appointment of guardian ad litem.
“The Court of Probate shall appoint a guardian ad litem to make any application under sections 45a-603 to 45a-622, inclusive, to represent or appear on behalf of any parent who is less than eighteen years of age or incompetent.”
- § 45a-708. Guardian ad litem for minor or incompetent parent.
(a) When, with respect to any petition for termination of parental rights ... it appears that either parent of the child is a minor or incompetent, the court shall appoint a guardian ad litem for such parent.”
- § 46b-47. Complaint for dissolution of marriage on ground of confinement for mental illness; procedure
(b) “If the conservator does not appear in court, or if the adverse party has no conservator, the court shall appoint a guardian ad litem for the adverse party.”
- § 46b-54. Counsel for minor children. Duties.
- § 46b-129a. Examination by physician. Appointment of counsel and guardian ad litem. (*Juvenile Matters*)

REGULATIONS:

- CODE OF FEDERAL REGULATIONS
45 C.F.R. § 1340.14(g) (2002) Guardian ad litem.
“In every case involving an abused or neglected child which results in a judicial proceeding, the State must insure the appointment of a guardian ad litem or other individual whom the State recognizes as fulfilling the same functions as a guardian ad litem, to represent and protect the rights and best interests of the child.”

COURT RULES

CONNECTICUT PROBATE PRACTICE BOOK (4th ed., 1996)

- Rule 3.5 Appointment of guardian ad litem in conservator proceedings
- Rule 4 Guardians ad litem—including cause for appointment, duties,...

CONNECTICUT PRACTICE BOOK (2003)

- § 25-62 Appointment of Guardian Ad Litem (*Family cases*)
- § 44-20 Appointment of Guardian Ad Litem

(a) In any criminal proceeding involving an abused or neglected minor child, a guardian ad litem shall be appointed. The judicial authority may also appoint a guardian ad litem for a minor involved in any other criminal proceedings...”

LEGISLATIVE REPORTS:

- PAMELA LUCAS, GUARDIANS AD LITEM AND COUNSEL IN CUSTODY CASES, Connecticut General Assembly, Office of Legislative Research, [Report No. 97-R-0290](#) (Feb. 21, 1997).
- LAWRENCE K. FURBISH, GUARDIAN AD LITEM IN NEGLECT AND ABUSE CASES, Connecticut General Assembly, Office of Legislative Research, [Report No. 98-R-0648](#) (April 23, 1998).

FORMS:

- 2 CONNECTICUT PRACTICE BOOK Form 106.16 (1978).
Motion for appointment of guardian ad litem
- MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT App. 3F (1987).
“Petition of Minor Plaintiff for Appointment of Guardian Ad Litem; Acceptance; and Order of Court” (3-138)

CASES:

- Schult v. Schult, 241 Conn. 767, 699 A.2d 134 (1997).
“... we conclude, that where the court has appointed both an attorney and a guardian ad litem to represent a child in a dissolution action, the attorney for the child may advocate a position different from that of the guardian ad litem so long as the trial court determines that it is in the best interests of the child to permit such dual, conflicting advocacy.” (780)
- Newman v. Newman, 235 Conn. 82, 663 A.2d 980 (1995).
“Typically, the child’s attorney is an advocate for the child, while the guardian ad litem is the representative of the child’s best interests. As an advocate, the attorney should honor the strongly articulated preference regarding taking an appeal of a child who is old enough to express a reasonable preference; as a guardian, the attorney might decide that, despite such a child’s present wishes, the contrary course of action would be in the child’s long term best interests, psychologically or financially.” (96-97)
- Orsi v. Senatore, 230 Conn. 459, 645 A.2d 986 (1994).
The appropriateness of the foster parent representing the minor as a next friend when both a guardian and a guardian ad litem have already been appointed.
- Ridgeway v. Ridgeway, 180 Conn. 533, 429 A.2d 801 (1980).
“Under General Statutes §46b-54. the court ‘may’ appoint counsel to protect the interests of a minor child in a dissolution action if it deems it to be in the best interests of the children. The term ‘may’ imports discretion...”
- Cottrell v. Connecticut Bank & Trust, 175 Conn. 257, 398 A.2d 307 (1978).
An appeal may be brought by a next friend when the guardian ad litem refuses to appeal
- Potter v. Alcorn, 140 Conn. 96, 99 A.2d 97 (1953)
The probate court has the “power to appoint a guardian ad litem in any proceeding in which the minor’s interest would be affected, whether the interest was pecuniary or not”. The probate court has the power to “make allowance” to the guardian ad litem to compensate him for his services.

STANDARDS:

- *American Bar Association Standards of Practice for Lawyers who Represent Children in Abuse and Neglect Cases* (A.B.A., 1996), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 843 (2d ed., 2001).

KEY NUMBER:

- West Key Numbers: Infants # 76 et seq.

ENCYCLOPEDIAS:

- 42 AM. JUR. 2d *Infants* §§ 158—201 (2000) *Representation of Infant*.
§ 183 *Guardian Ad Litem*
- 43 C.J.S. *Infants* §§222-242 (1978).
- Carol A. Crocca, Annotation, *Propriety and Prejudicial Effect of Third Party Accompanying or Rendering Support to Witness During Testimony*, 82 A.L.R. 4th 1038, § 7 (1990).
- Susan L. Thomas, Annotation, *Liability of Guardian Ad Litem for Infant Party to Civil Suit for Negligence in Connection with Suit*, 14 A.L.R. 5th 929 (1993).

**TEXTS &
TREATISES:**

- FAMILY LAW PRACTICE IN CONNECTICUT 7-26, Law Practice Handbooks (1996).
- ANN M. HARALAMBIE, THE CHILD'S ATTORNEY: A GUIDE TO REPRESENTING CHILDREN IN CUSTODY, ADOPTION, AND PROTECTION CASES (1993)
Guardians Ad Litem, p. 5-10
Selected Guidelines for Guardian Ad Litem, Appendix B, p. 239.
Excerpt, D. WHITCOMB, GUARDIANS AD LITEMS IN THE CRIMINAL COURTS (1988), Appendix C, p. 289.
- 1 DONALD T. KRAMER, LEGAL RIGHTS OF CHILDREN §§ 12.01-12.07 (1994).
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
§ 4.24 Independent Representation for the Child [Dependency and Neglect Proceedings]
§§ 11.23-11.24 Independent Representation for the Child [Custody Incident to Dissolution of Marriage]
§§ 21.04-21.05 Trial Techniques
- MICHAEL J. DALE ET AL., REPRESENTING THE CHILD CLIENT (1987).
§ 4.06[1][a] Guardian Ad Litem - Dependency Proceedings
§ 9.02[5] Guardian Ad Litem distinguished from the role of an attorney

ARTICLES:

- Robert Solomon, *Staying in Role: Representing Children in Dependency and Neglect Cases*, 70 CONN. B.J. 258 (1996).
- Edward Sokolnicki, *Attorney as Guardian Ad Litem for a Child in Connecticut*, 5 CONN. PROB. L.J. 237 (1991).
- Wilhelm, Hemenze & Fowler, *The Role of the Guardian Ad Litem in Probate Proceedings*, 65 CONN. B.J. 462 (1991).
- Richard Ducote, *Guardians Ad Litem in Private Custody Litigation: The case for Abolition*, 3 LOY. J. PUB. INT. L. 106 (2002).
- Judge Chester T. Harhut, *An Expanded Role for the Guardian Ad Litem*, 51 JUV. & FAM. CT. J., Summer 2000, at 31.
- *Recommendations of the Conference on Ethical Issues in the Legal Representation of Children*, 64 FORDHAM L. REV. 43 (1996), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 787 (1997).
- Jean Koh Peters, *The Roles and content of Best Interest in Client-Directed Lawyering for Children in Child Protective Proceedings*, 64 FORDHAM L. REV. 1505 (1996), reprinted in JEAN KOH PETERS, REPRESENTING CHILDREN IN CHILD PROTECTIVE PROCEEDINGS: ETHICAL AND PRACTICAL DIMENSIONS 483 (1997).
- Sarah H. Ramsey, *Representation of the Child in Protection Proceedings:*

- *The Determination of Decision-Making Capacity*, 17 FAM. L.Q. 287 (1983).
- Roy T. Stuckey, *Guardians Ad Litem as Surrogate Parents: Implications for Role Definition and Confidentiality*, 64 FORDHAM L. REV. 1785 (1996).
- H. Lila Hubert, *In the Child's Best Interests: The Role of the Guardian Ad Litem in Termination of Parental Rights Proceedings*, 49 U. MIAMI L. REV. 531 (1994).
- Catherine M. Brooks, *When a Child Needs a Lawyer*, 23 CREIGHTON L. REV. 757 (1990). ("This essay speaks to that lawyer who has just received a first-time appointment as a guardian ad litem to represent a child.")
- Rebecca H. Hartz, *Guardians Ad Litem in Child Abuse and Neglect Proceedings: Clarifying the Roles to Improve Effectiveness*, 27 FAM. L.Q. 327 (1993).
- Janice & Fred Morganroth, *Why Winging it Won't Work: Know Your Role as Guardian Ad Litem or Mediator. Otherwise You May Succumb to Malpractice*, 13 FAMILY ADVOCATE, Spring 1991, at 44.
- John H. Lightfoot, Jr., *Children's Rights, Lawyers Roles: Are the Duties of a Guardian Ad Litem the Same as an Advocate for the Child? Yes. No. Maybe*, 10 FAMILY ADVOCATE, Winter 1988, at 4.

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§ 3.3 Jurisdiction of the Courts Over Guardianship

SCOPE:

- Bibliographic resources relating to the Connecticut court's jurisdiction over guardianships of minor's person in Connecticut

DEFINITION:

- **Probate Court:** "In Connecticut since the earliest colonial days, 'a benign yet arbitrary power, which every sovereignty exercises, to take care of the persons and estates of infants,' has been conferred by statute upon the Courts of Probate From any decree of the Court of Probate, any person aggrieved may appeal to the Superior Court The appellate court will take the place of the Court of Probate and try the case *de nova*, but it has no greater power." Dunham v. Dunham, 97 Conn. 440, 442-443, 117 A. 504 (1922).
- **Superior Court:** "If the question of the custody of the infant be presented in divorce proceedings, or by writ of *habeas corpus*, the Superior Court is the proper forum. Otherwise, the probate courts have exclusive jurisdiction." Pfeiffer v. Pfeiffer, 99 Conn. 154, 157, 121 A. 174 (1923).
- **Residence of minor:** "the residence of a minor means his or her actual residence and not that imputed to the minor by the residence of his or her parents or guardian" CONN. GEN. STAT. § 45a-603 (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-606. Father and mother joint guardians
 - § 45a-616. Appointment of guardian or coguardians for minor; rights same as of sole surviving parent.

WEST KEY NUMBERS:

- *Courts* # 198-201. Courts of Probate Jurisdiction
 - 198. Nature and scope of jurisdiction in general
 - 199. Constitutional and statutory provisions
 - 200. Courts invested with probate jurisdiction
 - 200.5. Equitable powers in general
 - 201. Ancillary and incidental jurisdiction

COURT CASES

- Potter v. Alcorn, 140 Conn. 96, 100, 99 A.2d 97 (1953). "It is, of course, elementary that courts of probate are strictly statutory tribunals As such, they have only such powers as are either expressly or impliedly conferred upon them by statute."
- Lewis v. Klingberg, 100 Conn. 201, 204-205, 123 A. 4 (1923). "In acting under statutes conferring jurisdiction, the probate courts have no powers except those which are expressly granted and such other powers as are necessary to the exercise of the jurisdiction expressly conferred."
- Dunham v. Dunham, 97 Conn. 440, 443, 117 A. 504 (1922). "The jurisdiction and power of the Court of Probate has been long established, has been expressed from time to time in terms adapted to conditions which experience has revealed, is general and ample, and

evidently intended to cover the requirements of all circumstances."

- White v. Strong, 75 Conn. 308, 312, 53 A. 654 (1902). "The question raised by the complaint, whether the defendant, who was chosen guardian by a minor of lawful age to select his own guardian, was a proper person to be appointed, is one which is by statute exclusively within the original jurisdiction of the probate court and the appellate jurisdiction of the Superior Court. The decree of the Court of Probate, upon the question clearly within its jurisdiction, is conclusive upon the plaintiff, who was a party to the proceeding in that court."

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
Chapter 3. Guardianship
§ 3:9. Jurisdiction over guardianship of minor's person
- 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
Chapter 12. Guardianship
§ 12.04. Jurisdiction
- PETER L. COSTAS, MANAGING ED., LAWYERS' DESKBOOK: A REFERENCE MANUAL, (2d ed. 2000).
 - ❑ Lynn B. Cochrane, *Child Protection*. "Basic Principles: Guardianship of the Person of the Minor in Probate Court," pp. XVII-26.

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Table 10 Jurisdiction of Connecticut Courts

<p style="text-align: center;">Superior Court, Juvenile Matters (Civil) CONN. GEN. STAT. § 46b-121(a) (2003)</p>
<ul style="list-style-type: none"> • Adoption—appeals from probate • Emancipation of minors • Family with Special Service Needs—matters concerning • Parent as guardian, removal of contested matters transferred from the Probate Court appeals from Probate Court • Termination of parental rights of children committed to a state agency • Termination of parental rights contested matters transferred from the Probate Court appeals from Probate Court • Uncared-for, neglected or dependent children and youths within the state
<p style="text-align: center;">Superior Court, Juvenile Matters (Criminal) CONN. GEN. STAT. § 46b-121(a) (2003)</p>
<ul style="list-style-type: none"> • Delinquent children in the state—all proceeding concerning • persons sixteen years of age and older who are under the supervision of a juvenile probation officer while on probation or a suspended commitment to the Department of Children and Families, for purposes of enforcing any court orders entered as part of such probation or suspended commitment
<p style="text-align: center;">Probate Courts CONN. GEN. STAT. § 46b-121(a) (2003)</p>
<ul style="list-style-type: none"> • Adoption • Guardianship • Property rights of any child or youth

§ 3.4 Rights and Duties of a Guardian

SCOPE:

- Bibliographic resources relating to the rights and duties of a guardian in Connecticut

SEE ALSO:

- PROBATE COURT FREQUENTLY ASKED QUESTIONS:
<http://www.jud.state.ct.us/probate/faq.html#GUARDIANSHIPS>

DEFINITION:

- **Guardianship:** “means guardianship of the person of a minor, and includes: (A) The obligation of care and control; (B) the authority to make major decisions affecting the minor's education and welfare, including, but not limited to, consent determinations regarding marriage, enlistment in the armed forces and major medical, psychiatric or surgical treatment; and (C) upon the death of the minor, the authority to make decisions concerning funeral arrangements and the disposition of the body of the minor;” CONN. GEN. STAT. § 45a-604(5) (2003).
- **Guardian:** “means one who has the authority and obligations of 'guardianship' as defined in subsection (5) of this section [above]. CONN. GEN. STAT. § 45a-604(6) (2003).
- “A guardian of a minor child has no legal obligation of support for that child. This conclusion is compelled by our statutes regarding guardianship, by the common law background of those statutes, and by the policy undergirding those statutes and that common law.” *Favrow v. Vargas*, 231 Conn. 1, 18, 647 A.2d 731 (1994).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-604. Definitions
 - § 45a-606. Father and mother joint guardians
 - § 45a-616. Appointment of guardian or coguardians for minor; rights same as of sole surviving parent.
 - § 45a-622. Appointment of temporary guardian. Application. Rights and obligations
 - § 45a-631. Limitation on receipt or use of minor's property by parent, guardian or spouse. Release
 - § 45a-677. Guardians of mentally retarded persons. Powers and duties of plenary or limited guardian. Report. Transfer of title

LEGISLATIVE:

- 2000 CONN. ACTS 78 (Reg. Sess.). An act concerning the receipt or use of property belonging to a minor. House Bill No. 5880.

WEST KEY NUMBERS:

- *Guardian & Ward*
 - Custody and care of ward's person and estate
 - # 28. Representation of ward by guardian
 - # 29. Custody and control of person
 - # 30. Support and education

COURT CASES

- Miller v. Miller, 158 Conn. 217, 220, 258 A.2d 89 (1969), *cert. denied*, 396 U.S. 940, 90 S.Ct. 374, 24 L.Ed. 241. "A guardian of the person is entitled to the custody of his ward"
- Ehrsam v. Lee, 101 Conn. 349, 354, 125 A. 621 (1924). "The guardian's expenditures should in all cases be limited to those reasonably necessary for the ward."
- Holbrook v. Brooks, 33 Conn. 347, 351 (1866). "A guardian is bound to use reasonable and prudent care in the management of his ward's property; and the law justly requires the utmost fairness in all his dealings with the ward."

ENCYCLOPEDIAS:

- 39 AM JUR 2d *Guardian and Ward* (1999).
§§ 100-102. Care and control
§§ 103-106. Financing the care of ward
- For ALR Annotations see:
[Tables 4. ALR Annotations on the rights of guardians of minors](#)
[Table 5. ALR annotations on rights of guardians of adult incompetent](#)

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM , INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
Chapter 3. Guardianship
§ 3:11. Powers and duties of guardian of minor's person
§ 3:15. Necessity for guardianship of minor's estate
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
Chapter 12. Guardianship
§ 12.03. Rights and duties of the guardian

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Table 11 ALR annotations on rights of guardians of minors

Subject	ALR Annotation
Actions	Russell G. Donaldson, Annotation, <i>Judgment In Guardian's Final Accounting Proceedings As Res Judicata In Ward's Subsequent Action Against Guardian</i> , 34 ALR4th 1121 (1984).
Brainwashing	Gregory G. Sarno, Annotation, <i>Validity Of Guardianship Proceeding Based On Brainwashing Or Subject By Religious, Political, Or Social Organizations</i> , 44 ALR4th 1207 (1986).
Compensation	Annotation, <i>Fiduciary's Compensation On Estate Assets Distributed In Kind</i> , 32 ALR2d 778 (1953).
Gifts	<ul style="list-style-type: none"> James T. Watson, Annotation, <i>Validity Of Inter Vivos Gift By Ward To Guardian Or Conservator</i>, 70 ALR4th 499 (1989). Wanda Ellen Wakefield, Annotation, <i>Effect of testamentary gift to child conditioned upon specified arrangements for parental control</i>, 11 ALR4th 940 (1982).
Guaranty	Daniel E. Feld, Annotation, <i>Termination Of Continuing Guaranty By Appointment Of Guardian Or Conservator For Guarantor</i> , 55 ALR3rd 344 (1974).
Interest	Annotation, <i>Guardian's Liability For Interest On Ward's Funds</i> , 72 ALR2d 757 (1960).
Lease	Annotation, <i>Guardian's Power To Make Lease For Infant Ward Beyond Majority Or Term Of Guardianship</i> , 6 ALR3d 370 (1966).
Medical Treatment	Lisa K. Gregory, Annotation, <i>Propriety Of Surgically Invading Incompetent Or Minor For Benefit Of Third Party</i> , 4 ALR5th 1000 (1992).
Punishment	Annotation, <i>Criminal Liability For Excessive Or Improper Punishment Inflicted On Child By Parent, Teacher, Or One In Loco Parentis</i> , 89 ALR2d 396 (1963).
Statute of Limitations	Annotation, <i>Appointment Of Guardian For Incompetent Or For Infant As Affecting Running Of Statute Of Limitation Against Ward</i> , 86 ALR2d 965 (1962).
Sue or be Sued	Annotation, <i>Capacity Of Guardian To Sue Or Be Sued Outside State Where Appointed</i> , 94 ALR2d 162 (1964).
Trusts	John D. Hodson, Annotation, <i>Guardian's Authority, Without Seeking Court Approval, To Exercise Ward's Right To Revoke Trust</i> , 53 ALR4th 1297 (1987).
Will Contest	Annotation, <i>Validity And Enforceability Of Agreement To Drop Or Compromise Will Contest Or Withdraw Objections To Probate, Or Of Agreement To Induce Others To Do So</i> , 42 ALR2d 1319 (1955).

Table 12 ALR Annotations on rights of guardians of adult incompetent

Subject	ALR Annotation
Attorney-Client Privilege	Annotation, <i>Waiver Of Attorney-Client Privilege By Personal Representative Or Heir Of Deceased Client Or Guardian Of Incompetent</i> , 67 ALR2d 1268 (1959).
Beneficiary	Annotation, <i>Power Of Guardian Of Incompetent To Change Beneficiary In Ward's Life Insurance Policy</i> , 21 ALR2d 1191 (1952).
Compensation	Annotation, <i>Fiduciary's Compensation On Estate Assets Distributed In Kind</i> , 32 ALR2d 778 (1953).
Debts and obligations	Annotation, <i>Power Of Guardian, Committee, Or Trustee Of Mental Incompetent, After Latter's Death, To Pay Debts And Obligations</i> , 60 ALR2d 963 (1958).
Divorce or annulment	David E. Rigney, Annotation, <i>Power Of Incompetent Spouse's Guardian Or Representative To Sue For Granting Or Vacation Of Divorce Or Annulment Of Marriage, Or To Make A Compromise Or Settlement In Such Suit</i> , 32 ALR5th 673 (1995).
Gifts	<ul style="list-style-type: none"> Annotation, <i>Power To Make Charitable Gifts From Estate Of Incompetent</i>, 99 ALR2d 946 (1965). Annotation, <i>Power Of Court Or Guardian To Make Noncharitable Gifts Or Allowances Out Of Funds Of Incompetent Ward</i>, 24 ALR3d 863 (1969).
Interest	Annotation, <i>Guardian's Liability For Interest On Ward's Funds</i> , 72 ALR2d 757 (1960).
Joint Depositor	Annotation, <i>Effect Of Incompetency Of Joint Depositor Upon Status And Ownership Of Bank Account</i> , 62 ALR2d 1091 (1958).
Make expenditures or obligations	Peter G. Guthrie, <i>Right Of Guardian Or Committee Of Incompetent To Incur Obligations So As To Bind Incompetent Or His Estate, Or To Make Expenditures, Without Prior Approval By Court</i> , 63 ALR3d 780 (1975).
Medical Treatment	Lisa K. Gregory, Annotation, <i>Propriety Of Surgically Invading Incompetent Or Minor For Benefit Of Third Party</i> , 4 ALR5th 1000 (1992).
Sale of property	H.D. Warren, Annotation, <i>Power Of Court To Confirm Sale Of Ward's Property Over Objection Of Guardian</i> , 43 ALR2d 1445 (1955).
Statute of Limitations	<ul style="list-style-type: none"> John H. Derrick, Annotation, <i>Tolling Of Statute Of Limitations, On Account Of Minority Of Injured Child, As Applicable To Parent's Or Guardian's Right Of Action Arising Out Of Injury</i>, 49 ALR4th 216 (1986). Annotation, <i>Appointment Of Guardian For Incompetent Or For Infant As Affecting Running Of Statute Of Limitation Against Ward</i>, 86 ALR2d 965 (1962).
Stock	Annotation, <i>Right Of Foreign Personal Representative Or Guardian To Vote Stock Owned By Estate Or Ward</i> , 41 ALR2d 1082 (1955).
Sue or be Sued	Annotation, <i>Capacity Of Guardian To Sue Or Be Sued Outside State Where Appointed</i> , 94 ALR2d 162 (1964).
Torts	Annotation, <i>Liability Of Incompetent's Estate For Torts Committed By Guardian, Committee, Or Trustee In Managing Estate</i> , 40 ALR2d 1103 (1955).
Will	<ul style="list-style-type: none"> Jeffrey F. Ghent, Annotation, <i>Ademption Or Revocation Of Specific Devise Or Request By Guardian, Committee, Conservator, Or Trustee Of Mentally Or Physically Incompetent Testator</i>, 84 ALR4th 462 (1991). Annotation, <i>Effect Of Guardianship Of Adult On Testamentary Capacity</i>, 89 ALR2d 1120 (1963).

§ 3.5 Appointment of Guardians

SCOPE:

- Bibliographic resources relating to the appointment of guardians

DEFINITION:

- **Appointment of guardian of the person of the minor:** “In the case of a minor who has no guardian of the person due to the death of his parents, the probate court for the district in which the minor resides may appoint a guardian for the minor on its own initiative. When the court has removed both parents as guardians of the minor's person, it must appoint a successor guardian. If the court removes only one parent as guardian, or if one parent dies, the remaining parent is the sole guardian of the person of the minor.”

PROBATE COURT FREQUENTLY ASKED QUESTIONS:

<http://www.jud.state.ct.us/probate/faq.html#GUARDIANSHIPS>

STATUTES:

- CONN. GEN. STAT. (2003)
Chapter 802h. Protected persons and their property
Part II. Guardians of the person of a minor
§ 45a-616. Appointment of guardian or coguardians for minor; rights same as of sole surviving parent
§ 45a-617. Appointment of guardian or coguardians of the person of a minor
§ 45a-621. Appointment of guardian ad litem
§ 45a-622. Appointment of temporary guardian.
Application. Rights and obligations
§ 45a-629. Appointment of guardian for minor's estate
§ 45a-630. Application for appointment of guardian of the estate of a minor
§ 45a-632. Appointment of guardian of estate of non-resident minor
§ 45a-676. Appointment of plenary guardian or limited guardian by court. Written acceptance of guardianship. Probate bond. Findings of court. Appointment of employee of Department of Mental Retardation as plenary guardian or limited guardian

COURT CASES

- *In re Joshua S.*, 260 Conn. 182, 205, 794 A.2d 996 (2002). "All of the foregoing cases speak to a liberty right that has its basis in an ongoing relationship between parent and child. In this case, however, this special relationship no longer exists; what remains is a predeath statement by the parents of strong preference for the future regarding who should be guardians for their children. The Ps do not cite and, indeed, we have not discovered, any authority to support the proposition that this fundamental liberty interest of parents survives the death of the parents, much less that it may be passed to testamentary guardians who have had no previous relationship with the child, other than as neighbors. In the case before us, because this special parent-child relationship no longer exists, this constitutionally protected interest, likewise, no longer exists. Therefore, we are not required to give the same deference to a predeath statement of preference as we would were this a decision concerning a child made by a living parent."

- Garrett's Appeal from Probate, 44 Conn. Supp. 169, 184, 677 A.2d 1000 (1994), affirmed 237 Conn. 233, 676 A.2d 394. "The intent of that body is that a parent may be removed for failure to meet any one of the specified needs of the child, and that in appointing a subsequent guardian, the court must take into consideration the ability of the prospective guardian to meet *all* of the needs of a child."

ENCYCLOPEDIAS:

- 39 AM JUR 2d *Guardian and Ward* (1999).
 - §§ 40-53. Selection of guardian
 - § 40. Generally
 - § 41. Best interest of ward or conservatee as paramount
 - § 42. Preferences in appointment of guardian of minor
 - § 45. Right of minor ward to select guardian
 - § 48. Fitness or competency, generally
 - § 49. Neglect; failure to support minor ward
 - § 50. Moral character
 - § 51. Religious beliefs
 - § 52. Residence of appointee
 - §§ 76-79. Effect of appointment or denial thereof
- Danny R. Veilleux, Annotation, *Necessity Or Propriety Of Appointment Of Independent Guardian For Child Who Is Subject Of Paternity Proceedings*, 70 ALR4th 1033 (1989).
- Peter G. Guthrie, Annotation, *Priority And Preference In Appointment Of Conservator Or Guardian For An Incompetent*, 65 ALR3d 911 (1975).
- Peter G. Guthrie, Annotation, *Who Is Minor's Next Of Kin For Guardianship Purposes*, 63 ALR3d 813 (1975).
- Annotation, *Mental Condition Which Will Justify The Appointment Of Guardian, Committee, Or Conservator Of The Estate For An Incompetent Or Spendthrift*, 9 ALR3d 774 (1966).
- Annotation, *Consideration And Weight Of Religious Affiliations In Appointment Or Removal Of Guardian For Minor Child*, 22 ALR2d 696 (1952).

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM, *INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT* 3D (2002).
 - Chapter 3. Guardianship
 - §3:7. Types of guardianship of minors
 - § 3:8. Testamentary guardians
 - § 3:10. Removal of parents or other guardians of minor's person, temporary custody orders, visitation and reinstatement rights, appointment of guardian or coguardians
 - § 3:17. Appointment of guardian of the minor's estate
- 1 ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES* (1993).
 - Chapter 12. Guardianship
 - § 12.06. Persons who may be appointed guardian

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Table 13 Factors Used in Choosing a Guardian

CONN. GEN. STAT. § 45a-617 (2001).

When appointing a guardian or coguardians of the person of a minor, the court shall take into consideration the following factors:
(1) The ability of the prospective guardian or coguardians to meet, on a continuing day to day basis, the physical, emotional, moral and educational needs of the minor
(2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference
(3) the existence or nonexistence of an established relationship between the minor and the prospective guardian or coguardians
(4) the best interests of the child

§ 3.6 Child's or Respondent's Wishes

SCOPE:

- Bibliographic resources relating to the child's preference in the appointment of guardian

DEFINITION:

- **Guardian of the person of a minor:** "When appointing a guardian or coguardians of the person of a minor, the court shall take into consideration the following factors . . . (2) the minor's wishes, if he or she is over the age of twelve or is of sufficient maturity and capable of forming an intelligent preference" CONN. GEN. STAT. § 45a-617 (2003).
- **Guardian for minor's estate:** "If neither parent nor the guardian of the person of the minor will accept the appointment, or if the parents or guardian of the person of the minor are not proper persons to act as guardian of his or her estate, the court may appoint any proper person or persons chosen by the minor if the minor is twelve years of age or over." CONN. GEN. STAT. § 45a-629(b) (2003).
- **Guardian of mentally retarded person:** "In selecting a plenary guardian or limited guardian of the mentally retarded person, the court shall be guided by the best interests of the respondent, including, but not limited to, the preference of the respondent as to who should be appointed as plenary guardian or limited guardian." CONN. GEN. STAT. § 45a-676(f) (2003).

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-617. Appointment of guardian or coguardians of the person of a minor
 - § 45a-629(b). Appointment of guardian for minor's estate
 - § 45a-676(f). Appointment of plenary guardian or limited guardian by court

LEGISLATIVE:

- 1999 CONN. ACTS 84 § 5. An act concerning probate. Substitute House Bill No. 6685.

COURT CASES

- Kelsey v. Green, 69 Conn. 291, 37 A. 679 (1897).
- Dunham v. Dunham, 97 Conn. 440, 117 A. 504 (1922).

ENCYCLOPEDIAS:

- 39 AM JUR 2d *Guardian and Ward* (1999).
 - § 45. Right of minor ward to select guardian
 - § 46. _____. Nature of right
- Annotation, *Right Of Infant To Select His Own Guardian*, 85 ALR2d 921 (1962).

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
 - Chapter 3. Guardianship
 - § 3:2. Parent and child—statutory guardians of the person,

custody and control, termination of parental rights,
statutory parent

- 1 ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).

Chapter 12. Guardianship

§ 12.07. Child's preference

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560.

§ 3.7 Termination of Guardianship

SCOPE:

- Bibliographic resources relating to the termination of guardianship including removal, resignation or death of guardian

DEFINITION:

- **Age of majority:** "Except as otherwise provided by statute, on and after October 1, 1972, the terms "minor", "infant" and "infancy" shall be deemed to refer to a person under the age of eighteen years and any person eighteen years of age or over shall be an adult for all purposes whatsoever and have the same legal capacity, rights, powers, privileges, duties, liabilities and responsibilities as persons heretofore had at twenty-one years of age, and "age of majority" shall be deemed to be eighteen years." CONN. GEN. STAT. § 1-1d (2003).
- **Minor:** "means a person under the age of eighteen." CONN. GEN. STAT. § 45a-604(4) (2003).
- **Final accounting:** "Courts of probate shall have jurisdiction of the interim and final accounts of . . . guardians" CONN. GEN. STAT. § 45a-175(a) (2003).
- **Marriage:** "If any minor who has a guardian marries and owns or thereafter acquires property, the guardianship of such property shall continue during such person's minority." CONN. GEN. STAT. § 45a-629(b) (2003).

FORMS:

- Probate Court
 - PC-500. Application/Removal of guardian
 - PC-520. Order of notice, temporary custody or removal and appointment of guardian
 - PC-530. Notice/Receipt of application for removal of guardian
 - PC-531. Citation and return/Temporary custody/Removal of guardian
 - PC-560. Decree/Removal of guardian and appointment
 - PC-570. Guardian's report/Guardianship of the person of a minor
 - PC-580. Receipt and release of guardian of estate

STATUTES:

- CONN. GEN. STAT. (2003)
 - Chapter 802h. Protected persons and their property
 - Part II. Guardians of the person of a minor
 - § 45a-242. Replacement of fiduciary [as amended by 2001 Conn. Acts 114, effective October 1, 2001]
 - § 45a-605. Provisions construed in best interest of minor child
 - § 45a-610. Removal of parent as guardian
 - § 45a-613. Removal of guardian or coguardians of the person of a minor
 - § 45a-614. Removal of parent as guardian of minor
 - § 45a-615. False or malicious application for removal of guardian. Penalty

COURT CASES

- Potter v. Hiscox, 30 Conn. 508, 520 (1862). "The rendering a correct

account to a judge of probate, and having it approved by him, is not all that is required of a guardian. The court of probate does not necessarily find or record the fact that the guardian has delivered the property over to the ward. He adjusts the account, and ascertains the balance or amount of the property left in the guardian's hands. The guardian then delivers this over and takes a discharge from his ward, who being then of full age is competent to give it."

ENCYCLOPEDIAS:

- 39 AM JUR 2d *Guardian and Ward* (1999).
 §§ 85-92. Resignation and removal; selection of successor
 § 87. Grounds
 § 88. —Particular grounds
- Sheldon R. Shapiro, Annotation, *Resignation Or Removal Of Executor, Administrator, Guardian Or Trustee, Before Final Administration Or Before Termination Of Trust, As Affecting His Compensation*, 96 ALR3d 1102 (1979).
- Annotation, right of appeal from order on application for removal of personal representative, guardian, or trustee, 37 ALR2d 751 (1954).

TEXTS & TREATISES:

- RALPH H. FOLSOM & GAYLE B. WILHELM, *INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT* 3D (2002).
 Chapter 3. Guardianship
 § 3:10. Removal of parents or other guardians of minor's person, temporary custody orders, visitation and reinstatement rights, appointment of guardian or co-guardian
 § 3:19. Removal, resignation or death of guardian
 § 3:20. Termination of guardianship of minors
- 1 ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES* (1993).
 Chapter 12. Guardianship
 § 12.12. Change of guardian
 § 12.13. Termination of guardianship

COMPILER:

Lawrence Cheeseman, Supervising Law Librarian, Connecticut Judicial Department, Law Library at Middletown, One Court Street, Middletown, CT 06457. (860) 343-6560. [Email](#)

Termination of Parental Rights (TPR)

A Guide to Resources in the Law Library

Adoption and termination of parental rights: “[I]t is clear that adoption cannot proceed unless the parents’ rights are terminated in the first instance. The converse is not true. The parents’ rights can be terminated without an ensuing adoption . . . [T]here are circumstances wherein termination of a parent’s rights is not followed by adoption.” *In re Theresa S.*, 196 Conn. 18, 30-31, 491 A.2d 355 (1986).

Termination of parental rights: “means the complete severance by court order of the legal relationship, with all its rights and responsibilities, between child and his parent or parents so that the child is free for adoption except it shall not affect the right of inheritance of the child or the religious affiliation of the child.” CONN. GEN. STAT. §§ 45a-707, 17a-93 (2003).

Sections in this chapter:

- § 4.1 Rights of parents
 - § 4.1a Rights of parents in general
 - § 4.1b Right to counsel
 - § 4.1c Standard of proof
 - § 4.1d Equal protection of the laws
 - § 4.1e Notice and opportunity to be heard
- § 4.2 Termination by consent
- § 4.3 Grounds (nonconsensual)
 - § 4.3a Abandonment
 - § 4.3b Acts of parental commission or omission
 - § 4.3c No ongoing parent-child relationship
 - § 4.3d Neglected and Uncared for
 - § 4.3e Failure to rehabilitate
 - § 4.3f Parent has killed or committed an assault
 - § 4.3g Parent convicted of sexual assault resulting in conception of the child
- § 4.4 Procedures in TPR
 - § 4.4a Jurisdiction
 - § 4.4b Petition for TPR
 - § 4.4c Parties and Sstanding in TPR proceedings
 - § 4.4d Notice
 - § 4.4e TPR hearing
 - § 4.4f Reason effort to Locate and Reunify
 - § 4.4g Statutory factors
 - § 4.4h Motion to open or set aside
 - § 4.4i Appeals to Appellate Court
 - § 4.4j Standards of Appellate review

Tables in this chapter

Table 13 Rights of the remaining parent in TPR

Table 14 Foster parents and TPR

Table 15 Best Interest of the Child Standard in TPR

Table 16 Consent to TPR within 48 hours of birth or by minor

Table 17 ALR Annotations on Factors in TPR

Table 18 Proof of Grounds for Terminating Parental Rights

Table 19 Statutory Parent

Table 20 Who May Petition for TPR

Table 21 Statutory Factors Considered in TPR

Table 22 Cooperative Postadoption Agreements

See Also:

Appendix U Visitation for birth parent or blood relative after termination of parental rights

§ 4.1 Rights of Parents

- “The fundamental liberty interest of natural parents in the care, custody, and management of their children does not evaporate simply because they have not been model parents or have lost temporary custody of their child to the State. Even when blood relationships are strained, parents retain a vital interest in preventing the irretrievable destruction of their family life. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention in to ongoing family affairs.” Santorsky v. Kramer, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed 2d 599 (1982).
- “When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.” Santorsky v. Kramer, 455 U.S. 745, 753-754, 102 S.Ct. 1388, 71 L.Ed 2d 599 (1982).
- “[W]e recognize that ‘the right of parents qua parents to the custody of their children is an important principle that has constitutional dimensions,’ a principle echoed and illuminated in recent years by decisions of the United States Supreme Court and of this court.” In Re Juvenile Appeal (Docket No. 10155), 187 Conn. 431, 435, 446 A.2d 808 (1982).
- “Termination of parental rights is a judicial matter of exceptional gravity and sensitivity. Anonymous v. Norton, 168 Conn. 421, 430 362 A.2d 532 (1975). Termination of parental rights is the ultimate interference by the state in the parent-child relationship and, although such judicial action may be required under certain circumstances, the natural rights of the parents in their children ‘undeniably warrants deference and, absent a powerful countervailing interest, protection.’ Stanley v. Illinois, 405 U.S. 645, 651 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972); In re Juvenile Appeal (Anonymous), 177 Conn. 648, 671 420 A.2d 875 (1979).” In Re Emmanuel M., 43 Conn. Sup. 108, 112, 648 A.2d 904 (1993)

Section 4.1a

Rights of Parents in TPR

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the rights in general of parents and foster parents in termination of parental rights cases in Connecticut as of January 1, 2003.
- DEFINITIONS:**
- **Fourteenth Amendment** to the U.S. Constitution: “. . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”
 - **Due Process:** “freedom of personal choice in matters of . . . family life is one the liberties protected by the Due Process Clause of the Fourteenth Amendment.” Cleveland Board of Education v. LaFleur, 414 U.S. 632, 639-640, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974).
 - **Equal protection of the laws:** “The guaranty of equal protection of the laws ensures that the laws apply alike to all in the same situation, or that similar treatment is afforded to those in similar circumstances.” In re Nicolina T., 9 Conn. App. 598, 606 (1987).
- STATUTES:**
- CONN. GEN. STAT. (2003).
 - Chapter 319a. Child welfare
 - § 17a-112. Termination of parental rights of child committed to commissioner.
 - Chapter 803. Termination of parental rights and adoption
 - § 45a-708. Guardian ad litem for minor or incompetent parent
 - § 45a-715. Petition to terminate parental rights
 - § 45a-716. **Hearing on petition to terminate parental rights. Notice**
 - (b) The court shall cause notice of the hearing to be given to the following persons as . . . (2) the father of any minor child born out of wedlock, provided at the time of filing the petition (A) he has been adjudicated the father of such child by a court of competent jurisdiction, or (B) he has acknowledged in writing to be the father of such child, or (C) he has contributed regularly to the support of such child, or (D) his name appears on the birth certificate, or (E) he has filed a claim for paternity as provided under section 46b-172a, or (F) he has been named in the petition as the father of the child by the mother . . . If the recipient of the notice is a person described in subdivision (1) or (2) or is any other person whose parental rights are sought to be terminated in the petition, the notice shall contain a statement that the respondent has the right to be represented by counsel and if the respondent is unable to pay for counsel, counsel will be appointed for the respondent.
 - § 45a-717. Termination of parental rights. Conduct of hearing, Investigation and report. Grounds for termination

- (a) At the hearing held on any petition for the termination of parental rights . . . any party to whom notice was given shall have the right to appear and be heard with respect to the petition.
- § 45a-719. Reopening judgment terminating parental rights. Best interest of child. Final decree of adoption.

COURT RULES:

- CONN. PRACTICE BOOK (2003)
 - Chapter 32a. Rights of parties neglected, uncared for and dependent children and termination of parental rights
 - § 32a-1. Right to counsel and to remain silent
 - § 32a-2. Hearing procedure; Subpoenas
 - § 32a-3. Standards of proof
 - § 32a-4. Child witness
 - § 32a-5. Child in the court
 - § 32a-6. Interpreter
 - § 32a-7. Records
 - § 32a-8. Use of confidential alcohol and drug abuse treatment

CASES:

- In re Jeisean M., 74 Conn. App. 233, 240-241, 812 A2d 80 (2002). "Accordingly, we hold that in deciding an application for a waiver of fees, costs and expenses pursuant to Practice Book § 63-6 in a termination of parental rights proceeding, the factors to be weighed by the trial court are limited to a consideration of whether the applicant has a statutory right of appeal pursuant to General Statutes § 52-263 and whether the applicant is indigent."
- Roth v. Weston, 259 Conn. 202, 231, 789 A.2d 431 (2002). "We recognize that due process requires the clear and convincing test be applied to the termination of parental rights because it is the complete severance by court order of the legal relationship, with all its rights and responsibilities . . ."
- Stanley v. Illinois, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972). "The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection."
- Quilloin v. Walcott, 434 U.S. 646, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978). "But this is not a case in which the unwed father at any time had, or sought, actual or legal custody of his child. Nor is this a case in which the proposed adoption would place the child with a new set of parents with whom the child had never before lived. Rather, the result of the adoption in this case is to give full recognition to a family unit already in existence, a result desired by all except appellant."
- Prince v. Massachusetts, 321 U.S. 158, 166, 64 S. Ct. 438, 88 L. Ed. 645 (1944). "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder."
- In re Luke, 40 Conn. Supp. 316, 326-327, 498 A.2d 1054 (1985). "It is the responsibility of all of the adults involved to give the children's interest top priority over their own emotional objectives, so that they may understand and benefit from the fact that they have two 'Daddies' who love them, that having two 'Daddies' is not 'too complicated' but is rather an enriching factor in their lives."

WEST KEY NUMBERS:

- *Constitutional law* # 274(5). Deprivation of personal rights in general. Privacy, marriage, family, and sexual matters
- *Infants* # 178. Evidence. Termination of parental rights

DIGESTS:

- *ALR DIGEST: Attorneys* § 35. Right to counsel and consultation
Termination of parental rights
- CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*
- US L ED DIGEST: Constitutional Law § 803.5

ENCYCLOPEDIAS:

- 16B AM. JUR 2d *Constitutional Law* (1998).
§ 955. Hearing. Character and sufficiency; in general—Presence of person; counsel
- 59 AM. JUR 2d *Parent and Child* (2002).
§ 36. Loss or forfeiture of right
§ 37. —Burden of proof
- Patricia C. Kussman, Annotation, *Right Of Indigent Parent To Appointed Counsel In Proceeding For Involuntary Termination Of Parental Rights*, 92 ALR5th 379 (2001).
- Wanda Ellen Wakefield, Annotation, *Validity Of State Statutes Providing For Termination Of Parental Rights*, 22 ALR4th 774 (1983).
- *Termination Of Parental Rights Based On Abuse Or Neglect*, 9 COA 2d 483 (1997).
§ 24. Presumption and burden of proof

**TEXTS &
TREATISES:**

- RALPH H. FOLSOM AND GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTION 3d (2001).
Chapter 5. Adoption and Parental Rights
§ 5:6. Termination of parental rights and appointment of guardian or statutory parent for adoption petition
§ 5:7. Notice, guardian ad litem
§ 5:8. Hearing, investigation and report, grounds for termination of parental rights, consent terminations
- 1 JOAN HEIFETZ HOLLINGER ET AL., ADOPTION LAW AND PRACTICE (2001).
Chapter 2. Consent to adoption
§ 2.10. Exceptions to the requirement of parental consent
§ 2.10[2]. State courts and statutory examples
- 4 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2002).
Chapter 28. Termination of parental rights
§ 28.02. Elements of the proceeding
§ 28.02[2]. Constitutional limitations
§ 28.03. Procedural protections
[1]. Service of process
[2]. Notification of charges
[4]. Counsel for the parents
[5]. Disclosure
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
Chapter 13. Termination of Parental Rights
§ 13.18. Unmarried fathers

LAW REVIEWS:

- Michael J. Keenan, Note, *Connecticut's Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).
II. Background
E. The federal judiciary and constitutional issues, pp. 294-297

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Table 14 Rights of the remaining parent in TPR

Rights of the Remaining Parent in TPR	
CONN. GEN. STATS. § 17a-112(i) (2003) (partial)	“ Consent for the termination of the parental rights of one parent does not diminish the parental rights of the other parent of the child, nor does it relieve the other parent of the duty to support the child.”
CONN. GEN. STATS. § 17a-112(n) (2003) (partial)	“If the parental rights of only one parent are terminated, the remaining parent shall be the sole parent and, unless otherwise provided by law, guardian of the person.”
CONN. GEN. STATS. § 45a-717(i) (2003)	“If the parental rights of only one parent are terminated, the remaining parent shall be sole parent and, unless otherwise provided by law, guardian of the person.”

Table 15 Foster parents and TPR

Foster Parents and TPR	
STATUTES	<ul style="list-style-type: none"> • “The Commissioner of Children and Families shall not discriminate in preparing a home study or in placing a child with a prospective adoptive parent based on whether the prospective parent is or is not willing to become a foster parent pending an adoption placement.” CONN. GEN. STATS. § 45a-726(c) (2003).
ENCYCLOPEDIAS	<ul style="list-style-type: none"> • Michael G. Walsh, Annotation, <i>Standing Of Foster Parent To Seek Termination Of Rights Of Foster Child's Natural Parent</i>, 21 ALR4th 535 (1983). • Kristine Cordier Karnezis, Annotation, <i>Validity And Enforcement Of Agreement By Foster Parents That They Not Attempt To Adopt Foster Child</i>, 78 ALR3d 770 (1977).
CASE ANNOTATIONS	<ul style="list-style-type: none"> • John F. Gillespie, Annotation, <i>Status And Rights Of Foster Children And Foster Parents Under Federal Constitution</i>, 53 L. Ed. 2d 1116 (1978).

Table 16 Best Interest of the Child Standard in TPR

Best Interest of the Child Standard in TPR	
CONN. GEN. STATS. § 17a-112(p) (2003)	“The provisions of this section shall be liberally construed in the best interests of any child for whom a petition under this section has been filed.”
CONN. GEN. STATS. § 45a-706 (2003)	“The provisions of sections 45a-706 to 45a-709, inclusive, 45a-715 to 45a-718, inclusive, 45a-724 to 45a-734, inclusive, 45a-736, 45a-737 and 52-231a shall be liberally construed in the best interests of any child for whom a petition has been filed under said sections.”
CONN. GEN. STATS. § 45a-715 (2003)	<p>Postadoption agreements</p> <p>(i) If the Court of Probate determines that the child's best interests will be served by postadoption communication or contact with either or both birth parents, the court shall so order, stating the nature and frequency of the communication or contact. A court may grant postadoption communication or contact privileges if: (1) Each intended adoptive parent consents to the granting of communication or contact privileges; (2) the intended adoptive parent and either or both birth parents execute a cooperative agreement and file the agreement with the court; (3) consent to postadoption communication or contact is obtained from the child, if the child is at least twelve years of age; and (4) the cooperative postadoption agreement is approved by the court.</p> <p>(n) An adoptive parent, guardian ad litem for the child or the court on its own motion may, at any time, petition for review of communication or contact ordered pursuant to subsection (i) of this section, if the adoptive parent believes that the best interests of the child are being compromised. The court may order the communication or contact be terminated, or order such conditions in regard to communication or contact as the court deems to be in the best interest of the adopted child.</p>
CONN. GEN. STATS. § 45a-719 (2003)	<p>Reopening judgment terminating parental rights. Best interest of child. Final decree of adoption.</p> <p>“ . . . For the purpose of this section, ‘best interest of the child’ shall include, but not be limited to, a consideration of the age of the child, the nature of the relationship of the child with the caretaker of the child, the length of time the child has been in the custody of the caretaker, the nature of the relationship of the child with the birth parent, the length of time the child has been in the custody of the birth parent, any relationship that may exist between the child and siblings or other children in the caretaker's household, and the psychological and medical needs of the child. The determination of the best interest of the child shall not be based on a consideration of the socio-economic status of the birth parent or the caretaker.”</p>

Section 4.1b

Right to Counsel

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the right to counsel in termination of parental rights in Connecticut.
- DEFINITIONS:**
- “If a party appears without counsel, the court shall inform such party of the party’s right to counsel and upon request, if he or she is unable to pay for counsel, shall appoint counsel to represent such party. No party may waive counsel unless the court has first explained the nature and meaning of a petition for the termination of parental rights.” CONN. GEN. STAT. (2003) § 45a-717(b).
 - “The respondent’s due process rights are therefore properly determined by the balancing test of Mathews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), employed by the United States Supreme Court in considering a parent’s right in termination proceedings to representation by counsel . . . ” In Re Juvenile Appeal (Docket No. 10155), 187 Conn. 431, 435, 446 A.2d 808 (1982).
- STATUTES:**
- CONN. GEN. STAT. (2003)
 - Chapter 319a. Child welfare
 - § 17a-112. Termination of parental rights of child committed to commissioner.
 - Chapter 803. Termination of parental rights and adoption
 - § 45a-715. Petition to terminate parental rights
 - § 45a-716. **Hearing on petition to terminate parental rights. Notice**
 - (b). . . . If the recipient of the notice is a person described in subdivision (1) or (2) or is any other person whose parental rights are sought to be terminated in the petition, the notice shall contain a statement that the respondent has the right to be represented by counsel and if the respondent is unable to pay for counsel, counsel will be appointed for the respondent.
 - § 45a-717. Termination of parental rights. Conduct of hearing, Investigation and report. Grounds for termination
 - § 45a-719. Reopening judgment terminating parental rights. Best interest of child. Final decree of adoption
- COURT RULES:**
- CONN. PRACTICE BOOK (2003)
 - Chapter 32a-1. Rights of parties neglected, uncared for and dependent children and termination of parental rights
 - § 32a-1. Right to counsel and to remain silent
- CASES:**
- In re Alexander V., 223 Conn. 557, 566, 613 A.2d 780 (1992). “Accordingly we conclude that due process does not require a competency hearing in all termination cases but only when (1) the parent’s attorney requests such a

hearing, or (2) in the absence of such a request, the conduct of the parent reasonably suggests to the court, in the exercise of its discretion, the desirability of ordering such a hearing sua sponte.”

**WEST KEY
NUMBERS:**

- *Constitutional law* # 274(5). Deprivation of personal rights in general. Privacy, marriage, family, and sexual matters
- *Infants* # 178. Evidence. Termination of parental rights

DIGESTS:

- *ALR DIGEST: Attorneys* § 35. Right to counsel and consultation
Termination of parental rights
- CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*
- US L ED DIGEST: Constitutional Law § 803.5

ENCYCLOPEDIAS:

- 16B AM. JUR 2d *Constitutional Law* (1998).
§ 955. Hearing. Character and sufficiency; in general—Presence of person; counsel
- 59 AM. JUR 2d *Parent and Child* (2002).
§ 36. Loss or forfeiture of right
§ 37. —Burden of proof
- Patricia C. Kussman, Annotation, *Right Of Indigent Parent To Appointed Counsel In Proceeding For Involuntary Termination Of Parental Rights*, 92 ALR5th 379 (2001).
- Wanda Ellen Wakefield, Annotation, *Validity Of State Statutes Providing For Termination Of Parental Rights*, 22 ALR4th 774 (1983).
- *Termination Of Parental Rights Based On Abuse Or Neglect*, 9 COA 2d 483 (1997)

**TEXTS &
TREATISES:**

- RALPH H. FOLSOM AND GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTION 3d (2002).
Chapter 5. Adoption and Parental Rights
§ 5:6. Termination of parental rights and appointment of guardian or statutory parent for adoption petition
§ 5:7. Notice, guardian ad litem
§ 5:8. Hearing, investigation and report, grounds for termination of parental rights, consent termination
- 4 SANDRA MORGAN LITTLE, CHILD CUSTODY & VISITATION LAW AND PRACTICE (2002).
Chapter 28. Termination of parental rights
§ 28.03. Procedural protections
[4]. Counsel for the parents
- ANN M. HARALAMBIE, HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES (1993).
Chapter 13. Termination of Parental Rights
§ 13.06. Right to counsel

LAW REVIEWS:

- Michael J. Keenan, Note, *Connecticut's Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).
II. Background
E. The federal judiciary and constitutional issues, pp. 290-291

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lawrence.cheeseman@jud.state.ct.us

Section 4.1c

Standard of Proof

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the standard of proof in termination of parental rights in Connecticut.
- DEFINITIONS:**
- “The constitutional guarantee of due process of law requires that the statutory grounds for termination of parental rights be established by ‘clear and convincing evidence,’ not merely a fair preponderance of the evidence.” In Re Emmanuel, 43 Conn. Supp. 108, 113, 648 A.2d 904 (1994).
 - “The respondent’s due process rights are therefore properly determined by the balancing test of *Mathews v. Eldridge*, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976), employed by the United States Supreme Court in considering a parent’s right in termination proceedings to representation by counsel . . . and to the use of a clear and convincing standard of proof” In Re Juvenile Appeal (Docket No. 10155), 187 Conn. 431, 435, 446 A.2d 808 (1982).
- STATUTES:**
- CONN. GEN. STAT. (2003)
§ 17a-112. Termination of parental rights of child committed to commissioner
- COURT RULES:**
- CONN. PRACTICE BOOK (2003)
Chapter 32a-1. Rights of parties neglected, uncared for and dependent children and termination of parental rights
§ 32a-3. Standards of proof
- CASES:**
- In The Interests of Jaisean M., 2002 Ct. Sup. 5787, 5789, 2002 WL 1156030 (May 3, 2002) “*Roth and Troxel* have nothing to do with a termination of parental rights case. In fact, the burden of proof in a termination of parental rights case has long been ‘clear and convincing evidence,’ and the requirement that a grandparent seeking visitation overcome a similar burden actually parallels and reaffirms, rather than undermines, the statutory scheme applicable to termination cases.”
 - In re Eden, 250 Conn. 674, 694, 741 A.2d 873 (1999). “The constitutional requirement of proof by clear and convincing evidence applies only to those findings upon which the ultimate decision to terminate parental rights is predicated.”
- WEST KEY NUMBERS:**
- *Constitutional law* # 274(5). Deprivation of personal rights in general. Privacy, marriage, family, and sexual matters
 - *Infants* # 178. Evidence. Termination of parental rights
- DIGESTS:**
- *ALR DIGEST*: Attorneys § 35. Right to counsel and consultation

Termination of parental rights

- CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*
- US L ED DIGEST: Constitutional Law § 803.5

ENCYCLOPEDIAS:

- 16B AM. JUR 2d *Constitutional Law* (1998).
§ 955. Hearing. Character and sufficiency; in general—Presence of person; counsel
- 59 AM. JUR 2d *Parent and Child* (2002).
§ 36. Loss or forfeiture of right
§ 37. —Burden of proof
- Patricia C. Kussman, Annotation, *Right Of Indigent Parent To Appointed Counsel In Proceeding For Involuntary Termination Of Parental Rights*, 92 ALR5th 379 (2001).
- Wanda Ellen Wakefield, Annotation, *Validity Of State Statutes Providing For Termination Of Parental Rights*, 22 ALR4th 774 (1983).
- *Termination Of Parental Rights Based On Abuse Or Neglect*, 9 COA 2d 483 (1997).
§ 24. Presumption and burden of proof

**TEXTS &
TREATISES:**

- ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES* (1993).
Chapter 13. Termination of Parental Rights
§ 13.03. Standard of proof
- 4 JOAN HEIFETZ HOLLINGER ET AL., *ADOPTION LAW AND PRACTICE* (2001).
§ 2.10. Exceptions to the requirement of parental consent
[2]. State courts and statutory examples
- SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* (1999).
Chapter 28. Termination of parental rights
§ 28.04[2]. Burden of proof

LAW REVIEWS:

- Michael J. Keenan, Note, *Connecticut's Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).
II. Background
E. The federal judiciary and constitutional issues, pp. 293-294

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Section 4.1d

Equal Protection of the Laws

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the constitutional guarantee of equal protection of the laws in termination of parental rights in Connecticut
- DEFINITIONS:**
- “The guaranty of equal protection of the laws ensures that the laws apply alike to all in the same situation, or that similar treatment is afforded to those in similar circumstances.” *In re Nicolina T.*, 9 Conn. App. 598, 606, 520 A.2d 639 (1987).
- CASES:**
- *In re Nicolina T.*, 9 Conn. App. 598, 606, 520 A.2d 639 (1987). “The trial court’s court decision to terminate the respondent’s parental rights was made pursuant to the statutory requirements of General Statutes § 17-43a (b) [now § 17a-112], makes no distinction between mentally ill and other persons. As such, the statutory criteria applies with equal force to all parents without regard to their mental condition.”
- WEST KEY NUMBERS:**
- Constitutional Law #225.1. Equal protection of the laws. Regulations affecting civil rights or personal rights and relations in general.
- DIGESTS:**
- ALR DIGEST: *Termination of parental rights*
 - CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*
- ENCYCLOPEDIAS:**
- Wanda Ellen Wakefield, Annotation, *Validity Of State Statutes Providing For Termination Of Parental Rights*, 22 ALR4th 774 (1983).
§§ 5-9. Objections on grounds of discrimination; Equal protection
- COMPILER:** Lawrence Cheeseman, Connecticut Judicial Department Law Library, One Court Street, Middletown, CT 06457. (860) 343-6560. EMAIL: lawrence.cheeseman@jud.state.ct.us

Section 4.1e

Notice and Opportunity to Be Heard

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to the constitutional guarantee of notice and the opportunity to be heard including determination of parental competency.
- DEFINITIONS:**
- **Mentally incompetent person:** “one who is unable to understand the nature of the termination proceeding and unable to assist in the presentation of his or her case.” *In re Alexander V.*, 223 Conn. 557, 563, 613 A.2d 780 (1992).
- STATUTES:**
- CONN. GEN. STAT. (2003)
§ 45a-716. **Hearing on petition to terminate parental rights. Notice**
 - (a) Upon receipt of a petition for termination of parental rights, the Court of Probate or the Superior Court . . . shall set a time and place for hearing the petition. The time for hearing shall be not more than thirty days after the filing of the petition.
 - (b) The court shall cause notice of the hearing to be given to the following persons as applicable: (1) The parent or parents of the minor child, including any parent who has been removed as guardian on or after October 1, 1973, under section 45a-606; (2) the father of any minor child born out of wedlock, provided at the time of filing the petition (A) he has been adjudicated the father of such child by a court of competent jurisdiction, or (B) he has acknowledged in writing to be the father of such child, or (C) he has contributed regularly to the support of such child, or (D) his name appears on the birth certificate, or (E) he has filed a claim for paternity as provided under section 46b-172s, or (F) he has been named in the petition as the father of the child by the mother; (3) the guardian or any other person whom the courts shall deem appropriate . . .
 - (c) Except as provided in subsection (d) of this section, notice of the hearing and a copy of the petition, certified by the petitioner, the petitioner's agent or attorney, or the court clerk, shall be served at least ten days before the date for the hearing by personal service on the persons enumerated in subsection (b) of this section who are within the state, and by certified mail, return receipt requested, on the Commissioner of Children and Families. If the address of any person entitled to personal service is unknown, or if personal service cannot be reasonably effected within the state or if any person enumerated in subsection (b) of this section is out of the state, a judge or clerk of the court shall order notice to be given by registered or certified mail, return receipt requested, or by publication at least ten days before the

date of the hearing. Any publication shall be in a newspaper of general circulation in the place of the last-known address of the person to be notified, whether within or without this state, or if no such address is known, in the place where the termination petition has been filed.

- (d) In any proceeding pending in the Court of Probate, in lieu of personal service on a parent or the father of a child born out of wedlock who is either a petitioner or who signs under oath a written waiver of personal service on a form provided by the Probate Court Administrator, the court may order notice to be given by certified mail, return receipt requested, deliverable to addressee only and at least ten days prior to the date of the hearing. If such delivery cannot reasonably be effected, or if the whereabouts of the parents is unknown, then notice shall be ordered to be given by publication, as provided in subsection (c) of this section.

§ 45a-717. **Termination of parental rights. Conduct of hearing, Investigation and report. Grounds for termination**

- (a) At the hearing held on any petition for the termination of parental rights . . . any party to whom notice was given shall have the right to appear and be heard with respect to the petition.

CASES:

- In re Alexander V., 223 Conn. 557, 566, 613 A.2d 780 (1992). “Accordingly we conclude that due process does not require a competency hearing in all termination cases but only when (1) the parent’s attorney requests such a hearing, or (2) in the absence of such a request, the conduct of the parent reasonably suggests to the court, in the exercise of its discretion, the desirability of ordering such a hearing sua sponte.”

WEST KEY NUMBERS:

- CONSTITUTIONAL LAW # 274. Deprivation of personal rights in general.
Privacy
(5). Privacy; marriage, family and sexual matters
- MENTAL HEALTH # 472. Capacity to sue and be sued

DIGESTS:

- CONNECTICUT FAMILY LAW CITATIONS: *Termination of Parental Rights*

TEXTS & TREATISES:

- ANN M. HARALAMBIE, *HANDLING CHILD CUSTODY, ABUSE AND ADOPTION CASES* (1993).
Chapter 13. Termination of Parental Rights
§ 13.04. Standing
§ 13.05. Service of process
- 1 JOAN HEIFETZ HOLLINGER ET AL., *ADOPTION LAW AND PRACTICE* (2001).
§ 2.10[2]. State courts and statutory examples
- 4 SANDRA MORGAN LITTLE, *CHILD CUSTODY & VISITATION LAW AND PRACTICE* (2002).
Chapter 28. Termination of parental rights
§ 28.03. Procedural protections
[1]. Service of process
[2]. Notification of charges
§ 28.04[5]. Right to be physically present

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Termination by Consent

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to the consensual termination of parental rights in Connecticut

- DEFINITIONS:**
- If a parent who is consenting to the termination of such parent's parental rights appears at the hearing on the petition for termination of parental rights, **the court shall explain to the parent the meaning and consequences of termination of parental rights**. Nothing in this subsection shall be construed to require the appearance of a consenting parent at the hearing regarding the termination of such parent's parental rights except as otherwise provided by court order. CONN. GEN. STAT. § 45a-717(a) (2003). [emphasis added]
 - At the adjourned hearing or at the initial hearing where no investigation and report has been requested, the court may approve a **petition for termination of parental rights based on consent** filed pursuant to this section terminating the parental rights and may appoint a guardian of the person of the child, or if the petitioner requests, the court may appoint a statutory parent, if it finds, upon **clear and convincing evidence** that (1) the termination is in the **best interest of the child** and (2) such parent has **voluntarily and knowingly consented** to termination of the parent's parental rights with respect to such child. CONN. GEN. STAT. § 45a-717(f) (2003). [emphasis added]
 - If the court denies a petition for termination of parental rights based on consent, it may refer the matter to an agency to assess the needs of the child, the care the child is receiving and the plan of the parent for the child. Consent for the termination of the parental right of one parent does not diminish the parental rights of the other parent of the child nor does it relieve the other parent of the duty to support the child. CONN. GEN. STAT. § 45a-717(f) (2003).

- STATUTES:**
- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to the Commissioner of Children and Families
 - § 45a-715. **Petition to terminate parental rights**
 - (d) If a petition indicates that either or both parents consent to the termination of their parental rights, or if at any time following the filing of a petition and before the entry of a decree a parent consents to the termination of his parental rights, each consenting parent shall acknowledge such consent on a form promulgated by the Office of the Chief Court Administrator evidencing to the satisfaction of the court that the parent has voluntarily and

knowingly consented to the termination of his parental rights.
[partial].

§ 45a-717. **Termination of parental rights. Conduct of hearing.**

Investigation and report. Grounds for termination.

(a) If a parent who is consenting to the termination of such parent's parental rights appears at the hearing on the petition for termination of parental rights, the court shall explain to the parent the meaning and consequences of termination of parental rights. Nothing in this subsection shall be construed to require the appearance of a consenting parent at the hearing regarding the termination of such parent's parental rights except as otherwise provided by court order. [partial]

(f) If the court denies a petition for termination of parental rights based on consent, it may refer the matter to an agency to assess the needs of the child, the care the child is receiving and the plan of the parent for the child. [partial]

FORMS:

- Probate Court
 - PC-600. Application, termination of parental rights
 - PC-610. Affidavit, temporary custody, removal, termination or adoption
 - PC-620. Order of notice/termination, appointment of statutory parent or guardian and/or adoption
 - PC-630. Citation and return/termination of parental rights
 - PC-631. Notice of hearing, parental rights matters
 - PC-682. Court order/request/return/investigation of parental rights matter/emancipation of minor
 - CM-15. Decree/report following consent termination
- [Superior Court](#)
 - JD-JM-40. Affidavit, consent of termination of parental rights
- 19 AM JUR PLEADING AND PRACTICE FORMS *Parent and Child* (1997 rev.)
 - § 131. Affidavit—Voluntary relinquishment by mother of parental rights

CASES:

- In Re Bruce R., 34 Conn. App. 176, 181, 640 A.2d 643 (1994), aff'd 234 Conn. 194 (1995). "We conclude that under the present statutory scheme a parent may petition for the termination of his or her own parental rights and that a petition for the termination of parental rights is not dependent on a pending adoption or state custodial placement."

TEXTS:

- PETER L. COSTAS, MANAGING ED., *LAWYERS' DESKBOOK: A REFERENCE MANUAL*, (2d ed. 2000).
 - Lynn B. Cochrane, *Child Protection*. "Termination of Parental Rights," pp. XVII-19.
- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT* (1997).
 - Chapter 3, Termination of Parental Rights.
 - § 23. Termination by consent

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Table 17 Consent to TPR within 48 hours of birth or by minor

Consent to TPR within 48 Hours of Birth or by Parent Who is a Minor	
CONN. GEN. STATS. § 17a-112(a) (2003) (partial)	“No consent to termination by a mother shall be executed within forty-eight hours immediately after the birth of such mother's child. A parent who is a minor shall have the right to consent to termination of parental rights and such consent shall not be voidable by reason of such minority. A guardian ad litem shall be appointed by the court to assure that such minor parent is giving an informed and voluntary consent.”
CONN. GEN. STATS. § 45a-715(d) (2003) (partial)	“No consent to termination by a mother shall be executed within forty-eight hours immediately after the birth of her child. A parent who is a minor shall have the right to consent to termination of parental rights and such consent shall not be voidable by reason of such minority. A guardian ad litem shall be appointed by the court to assure that such minor parent is giving an informed and voluntary consent.”

Grounds (Nonconsensual)

A Guide to Resources in the Law Library

“At the adjourned hearing or at the initial hearing where no investigation and report has been requested, the court may approve a petition terminating the parental rights and may appoint a guardian of the person of the child, or, if the petitioner requests, the court may appoint a statutory parent, if it finds, upon clear and convincing evidence, that (1) the termination is in the best interest of the child, and (2)

- (A) the child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child;
- (B) the child has been denied, by reason of an act or acts of parental commission or omission, including, but not limited to sexual molestation and exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being. Nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights;
- (C) there is no ongoing parent-child relationship which is defined as the relationship that ordinarily develops as a result of a parent having met on a continuing, day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of the parent-child relationship would be detrimental to the best interests of the child;
- (D) the parent of a child who (i) has been found by the Superior Court or the Probate Court to have been neglected or uncared for in a prior proceeding, or (ii) is found to be neglected or uncared for and has been in the custody of the commissioner for at least fifteen months and such parent has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child;
- (E) the parent of a child, under the age of seven years who is neglected or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable amount of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families;
- (F) the parent has killed through deliberate, nonaccidental act another child of the parent or has requested, commanded, importuned, attempted, conspired or solicited such killing or has committed an assault, through deliberate, nonaccidental act that resulted in serious bodily injury of another child of the parent; or
- (G) the parent was convicted as an adult or a delinquent by a court of competent jurisdiction of sexual assault resulting in the conception of the child except for a violation of section 53a-71 or 53a-73a, provided the court may terminate such parent's parental rights to such child at any time after such conviction.”

CONN. GEN. STATS. § 45a-717(g) (2003)

Section 4.3a

Abandonment

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the abandonment of a child as grounds for termination of parental rights in Connecticut
- DEFINITIONS:**
- **Abandoned** “means left without provision for reasonable and necessary care or supervision” CONN. GEN. STAT. §46b-115a(1) (2003)
 - **Temporary Emergency Jurisdiction:** (a) A court of this state has temporary emergency jurisdiction if the child is present in this state and (1) the child has been abandoned” CONN. GEN. STAT. § 46b-115n (2003)
- STATUTES:**
- CONN. GEN. STAT. (2003)
 - § 17a-112. **Termination of parental rights of child committed to the Commissioner of Children and Families**
 - (j)(3)(A). The child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child
 - § 45a-717. **Termination of parental rights. Grounds for termination**
 - (g) (2) (A). [T]he child has been abandoned by the parent in the sense that the parent has failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the child;
- CASES:**
- In re Alexander C., 67 Conn. App. 417, 426, 787 A.2d 608 (2001). "In the context of termination of parental rights due to abandonment, this court has stated that among the generally understood obligations of parenthood are the expression of love and affection for the child, and the expression of personal concern over the health, education and general well-being of the child."
 - In re Deana E., 61 Conn. App. 185, 193, 763 A.2d 37 (2000). ““The commonly understood general obligation of parenthood entail these minimum attributes: (1) express love and affection for the child; (2) express personal concern over the health, education and general well-being of the child; (3) duty to supply the necessary food, clothing, and medical care; (4) the duty to provide an adequate domicile; and (5) the duty to furnish social and religious guidance.”” [original quote from In re Adoption of Webb, 14 Wash. App. 651, 657, 544 P.2d 130(1975)].
 - In re Terrance C., 58 Conn. App. 389, 394-395, 755 A.2d 232 (2000). “Incarceration alone, however, is not sufficient to establish the statutory grounds for abandonment.”
 - In re Kezia M., 33 Conn. App. 12, 17-18, 632 A.2d 1122, cert. den., 228 Conn. 915 (1993). “Abandonment focuses on the parent’s conduct Abandonment occurs where a parent fails to visit a child, does not display love or affection for the child, does not personally interact with the child,

and demonstrates no concern for the child's welfare."

- In Re Rayna M., 13 Conn. App. 23, 37, 534 A.2d 897 (1987). "It is not lack of interest alone which is the criterion in determining abandonment. Abandonment under General Statutes 17-43a(b)(1) requires failure to maintain "interest, concern or responsibility as to the welfare of the child." "Attempts to achieve contact with a child, telephone calls, the sending of cards and gifts, and financial support are indicia of 'interest, concern or responsibility' for the welfare of a child."
- In re Luke G., 40 Conn. Sup. 316, 323, 498 A. 2d 1054 (1985). "Where a parent fails to visit a child, fails to display any love or affection for the child, has no personal interaction with the child, and no concern for the child's welfare, statutory abandonment has occurred."

**WEST KEY
NUMBERS:**

- *Infants* # 157. Abandonment or absence of parent

ENCYCLOPEDIAS:

- 32 POF3d 83 § 4 (1995). *Grounds For Termination Of Parental Rights*.
- 16 COA 219 (1988). *Cause Of Action For Adoption Without Consent Of Parent On Grounds Of Abandonment*.
- Annotation, *What Constitutes Abandonment Or Desertion Of Child By Its Parent Or Parents Within Purview Of Adoption Laws*, 35 ALR2d 662 (1954).

TEXTS:

- PETER L. COSTAS, MANAGING ED., *LAWYERS' DESKBOOK: A REFERENCE MANUAL*, (2d ed. 2000).
Lynn B. Cochrane, *Child Protection*. "Termination of Parental Rights," pp. XVII-19.
- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT* (1997).
Chapter 3, Termination of Parental Rights.
§ 24. Nonconsensual Termination: Grounds
A. Abandonment

LAW REVIEWS:

- Matthew R. Asman, Note, *The Rights Of A Foster Parent Versus The Biological Parent Who Abandoned The Child: Where Do The Best Interest Of The Child Lie?* 8 CONNECTICUT PROBATE LAW JOURNAL 93 (1993).
- Verna Lilburn, Note, *Abandonment As Grounds For The Termination Of Parental Rights*, 5 CONNECTICUT PROBATE LAW JOURNAL 263 (1991).

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Table 18 ALR Annotations on Factors in TPR

ALR Annotations on Factors in Termination of Parental Rights	
Drug use	Mary E. Taylor, Annotation, <i>Parent's Use Of Drugs As Factor In Awarding Of Custody Of Children, Visitation Rights Or Termination Of Parental Rights</i> , 20 ALR5th 534 (1994).
Indigence	<ul style="list-style-type: none"> • Claudia G. Catalano, Annotation, <i>Natural Parent's Indigence As Precluding Finding That Failure To Support Child Waived Requirements Of Consent To Adoption—Factors Other Than Employment Status</i>, 84 ALR5th 191 (2000). • Claudia G. Catalano, Annotation, <i>Natural Parent's Indigence Resulting From Unemployment Or Underemployment As Precluding Finding That Failure To Support Child Waived Requirement Of Consent To Adoption</i>, 83 ALR5th 375 (2000). • Claudia G. Catalano, Comment Note, <i>Natural Parent's Indigence As Precluding Finding That Failure To Support Child Waived Requirement Of Consent To Adoption—General Principles</i>, 82 ALR5th 443 (2000).
Mental deficiency	Anne M. Payne, Annotation, <i>Parent's Mental Deficiency As Factor In Termination Of Parental Rights—Modern Status</i> , 1 ALR5th 469 (1992).
Transsexuality of parent	Michael P. Sullivan, Annotation, <i>Parent's Transsexuality As Factor In Award Of Custody Of Children, Visitation Rights, Or Termination Of Parental Rights</i> , 59 ALR4th 1170 (1988).

Act(s) of Parental Commission Or Omission

A Guide to Resources in the Law Library

SCOPE:

Bibliographic sources relating to termination of parental rights in Connecticut on the grounds of the denial of the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being because of parental omissions or commissions.

DEFINITIONS:

- “[T]he child has been denied, by reason of an act or acts of parental commission or omission, including, but not limited to sexual molestation and exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being. Nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights,” CONN. GEN. STATS. § 45a-717(g)(2)(B) (2003)
- **Abused:** “means that a child or youth (A) has had physical injury or injuries inflicted upon him other than by accidental means, or (B) has injuries which are at variance with the history given of them, or (C) is in a condition which is the result of maltreatment such as, but not limited to, malnutrition, sexual molestation or exploitation, deprivation of necessities, emotional maltreatment or cruel punishment . . .” CONN. GEN. STAT. § 46b-120(3) (2001). **Note:** On or after July 1, 2001, CONN. GEN. STAT. § 46b-120(4) (2003).
- **Emotional injury:** “There is nothing in this clear statutory language that limits the acts of commission or omission to the serious physical injury of a child, rather than the serious emotional injury of a child.” *In re Seah H.*, 24 Conn. App. 135, 144, 586 A.2d 1171 (1991), cert. den. 218 Conn. 904.
- **Prima facie evidence:** “The language regarding prima facie evidence shifts the burden of proof from the petitioner to the parent to show why a child with clear evidence of physical injury that is unexplained should not be permanently removed from that parent's care.” *Ibid.*

STATUTES:

- CONN. GEN. STAT. (2003)
§ 17a-112(j)(3)(C). [T]he child has been denied, by reason of an act or acts of parental commission or omission including, but not limited to, sexual molestation or exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being. Nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental

rights;
 § 45a-717(g)(2)(B)."the child has been denied, by reason of an act or acts of parental commission or omission, including, but not limited to sexual molestation and exploitation, severe physical abuse or a pattern of abuse, the care, guidance or control necessary for the child's physical, educational, moral or emotional well-being. Nonaccidental or inadequately explained serious physical injury to a child shall constitute prima facie evidence of acts of parental commission or omission sufficient for the termination of parental rights;"

CASES:

- In re Carissa K., 55 Conn. App. 768, 782-3, 740 A.2d 1232 (1999). "The court found that C had been sexually abused by D because the department's expert testified that C's description of abuse was articulate and that she was able to make distinctions between what her maternal uncle did to her and what D did to her."
- In re Tabitha T., 51 Conn. App. 595, 603, 722 A.2d 1232 (1999). "While the children were in the respondent's care, the respondent failed to protect them from sexual abuse by their older brother. At one point, the respondent specifically told Tabitha not to disclose to therapist Martha Roberts anything about the sexual abuse or any other goings on of the family."
- In Re Felicia D., 35 Conn. App. 490, 502, 646 A.2d 862 (1994), cert. den. 231 Conn. 931 (1994). "The trial court found that Janelle was a victim of sexual abuse, and had sustained serious head injuries. Janelle received the injuries while in the respondent's care and the respondent offered no explanation consistent with those injuries. The court also found that although the respondent was not the person who inflicted serious physical injury on Janelle, she continually exposed her to the risk of serious injury by associating with dangerous men. She did not act to protect Janelle from sustaining the injuries she received, and she did not acknowledge the possibility that her husband, Peter Signorino, might have caused the injuries. These circumstances, the court held, cast grave doubt on the respondent's ability to parent. We conclude that the trial court's conclusion that this ground for termination existed as to Janelle is legally correct and factually supported."
- In re Seah H., 24 Conn. App. 135, 146, 586 A.2d 1171 (1991), cert. den. 218 Conn. 904. "We conclude that the statutory language 'acts of commission and omission' applies to custodial and noncustodial parents alike"
- In re Luke G. 40 Conn. Supp. 316, 324, 498 A.2d 1054 (1985). "The legislative history of § 45-61f (f)[now 45a-717(g)(2)] makes it clear that it was added to the law so that seriously abused children could be removed permanently from the care of the parent inflicting such abuse."

**WEST KEY
NUMBERS:**

- *Infants* # 179. Evidence. Weight and sufficiency. Deprivation, neglect or abuse

ENCYCLOPEDIAS:

- Elizabeth Trainor, Annotation, *Sufficiency Of Evidence To Establish Parent's Knowledge Or Allowance Of Child's Sexual Abuse By Another Under Statute Permitting Termination Of Parental Rights For "Allowing" Or "Knowingly Allowing" Such Abuse To Occur*, 53 ALR5th 499 (1997).
- 32 POF3d 83 (1995). *Grounds For Termination Of Parental Rights*.
 - § 28. Physical evidence of neglect or abuse
 - § 29. Unexplained injuries
 - § 30. Expert opinion that child has been abused

TEXTS:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). CHAPTER 3, TERMINATION OF PARENTAL RIGHTS.
§ 24. Nonconsensual Termination: Grounds
C. Acts of commission/omission

LAW REVIEWS:

- Michael J. Keenan, Note, *Connecticut's Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).

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Section 4.3c

No Ongoing Parent-Child Relationship

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to termination of parental rights in Connecticut on the grounds of no on-going parent-child relationship.
- DEFINITIONS:**
- “[T]here is no ongoing parent-child relationship which is defined as the relationship that ordinarily develops as a result of a parent having met on a continuing, day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of the parent-child relationship would be detrimental to the best interests of the child;” CONN. GEN. STATS. § 45a-717(g)(2)(C) (2003)
- STATUTES:**
- CONN. GEN. STAT. (2003).
17a-112(j)(3)(D). [T]here is no ongoing parent-child relationship, which means the relationship that ordinarily develops as a result of a parent having met on a day to day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of such parent-child relationship would be detrimental to the best interest of the child;
§ 45a-717(g)(2)(C). "there is no ongoing parent-child relationship which is defined as the relationship that ordinarily develops as a result of a parent having met on a continuing, day-to-day basis the physical, emotional, moral and educational needs of the child and to allow further time for the establishment or reestablishment of the parent-child relationship would be detrimental to the best interests of the child;"
- CASES:**
- In re Alexander C., 67 Conn. App. 417, 426-427, 787 A.2d 608 (2001). "The respondent's separation from the child, his failure to seek out supervised visitation and his lack of interest in the child's life precluded the development of an ongoing parent-child relationship. We conclude, therefore, that the court's finding of a lack of an ongoing parent-child relationship was legally correct and factually supported."
 - In re Shane P., 58 Conn. App. 234, 240-241, 753 A.2d 409 (2000). "The evidence before the court was sufficient to support the conclusion that the child has no present memories of or feelings for the respondent. Shane does not refer to the respondent as his mother and has no memories of any maternal relationship with her. The respondent admitted at trial that Shane does not know her as he should know his mother. Rather, Shane refers to

his foster mother as his mother. Although Shane does warm to the respondent when visiting her in prison, he is not eager to see her initially and seeks comfort from his foster parents after visits.”

- In Re Passionique T., 44 Conn.Supp. 551, 563-4, 695 A.2d 1107 (1996). “The child clearly knows that Linda T. is her mommy - or one of her mommies - and has no aversion or documented negative reaction to her visits. Even if Karen M. is identified as her principal mommy after eighteen months of being her primary caretaker, the fact that this is a natural result when custody is removed from a biological parent by action of the department is a bar to using this fact to establish this ground for termination.” .
- In re Valerie D., 223 Conn. 492, 494-495, 613 A.2d 748 (1992). “The dispositive issues in this appeal are whether: (1) General Statutes 45a-717 (f) (2)[fn1] permits the termination of the parental rights of the mother of an infant based upon the mother's prenatal conduct of injecting cocaine;”
- In re Jessica M., 217 Conn. 459, 469, 586 A.2d 597 (1991). “The Appellate Court, applying the statutory standard of ‘no ongoing parent-child relationship’ in the light of our decisions, has correctly concluded that the statute requires that a child have some ‘present memories or feelings for the natural parent’ that are positive in nature.”
- In Re Karrlo K. 44 Conn. Supp. 101, 116, 669 A.2d 1249 (1994). “No ongoing parent-child relationship contemplates a situation in which, regardless of fault, a child either has never known their parents, or that no relationship has ever developed between them, or has definitely lost that relationship, so that despite its former existence it has now been completely displaced. In any case, the ultimate question is ‘whether the child has no present memories or feelings for the natural parent’ The mere recognition of an individual as a parent will not defeat this ground.”
- In Re Kezia M. 33 Conn.App.12, 20, 632 A.2d 1122 (1993). “This part of the statute requires the trial court to undertake a two-pronged analysis. First, there must be a determination that no parent-child relationship exists, and second, the court must look into the future and determine whether it would be detrimental to the child's best interest to allow time for such a relationship to develop.”

ENCYCLOPEDIAS:

- Mary E. Taylor, Annotation, *Parent’s Use Of Drugs As Factor In Award Of Custody Of Children, Visitation Rights, Or Termination Of Parental Rights*, 20 ALR5th 534 (1994).

TEXTS:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). CHAPTER 3, TERMINATION OF PARENTAL RIGHTS.
D. No ongoing parent-child relationship

LAW REVIEWS:

- Michael J. Keenan, Note, *Connecticut’s Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).
- Sharon I. Farquharson, Comment, *The “Two Prong” Inquiry—The Best Alternative For Conflicting Rights Involved In Proceedings For Termination Of Parental Rights*, 13 CONNECTICUT .LAW REVIEW 709 (1981).

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Neglected & Uncared for

A Guide to Resources in the Law Library

SCOPE: Bibliographic references relating to termination of parental rights in Connecticut on the grounds of neglect and uncared for child.

SEE ALSO: • [§ 1.3e. Failure to rehabilitate](#)

DEFINITIONS:

- **Neglected:** “a child or youth may be found "neglected" who (A) has been abandoned or (B) is being denied proper care and attention, physically, educationally, emotionally or morally or (C) is being permitted to live under conditions, circumstances or associations injurious to his well-being or (D) has been abused . . .” CONN. GEN. STAT. § 46b-120(8) (2001). **Note:** On or after July 1, 2001, CONN. GEN. STAT. § 46b-120(9) (2003).
- **Uncared for:** “a child or youth may be found ‘uncared for’ who is homeless or whose home cannot provide the specialized care which his physical, emotional or mental condition requires. For the purposes of this section the treatment of any child by an accredited Christian Science practitioner in lieu of treatment by a licensed practitioner of the healing arts, shall not of itself constitute neglect or maltreatment . . .” CONN. GEN. STAT. § 46b-120(9) (2001). **Note:** On or after July 1, 2001, CONN. GEN. STAT. § 46b-120(10) (2003).

STATUTES:

- CONN. GEN. STAT. (2003).
 § 17a-112(j)(3)(B) and (E). **Termination of parental rights of child committed to Commissioner of Children and Families.**
 § 45a-717(g)(2)
 (D). [T]he parent of a child who (i) has been found by the Superior Court or the Probate Court to have been neglected or uncared for in a prior proceeding, or (ii) is found to be neglected or uncared for and has been in the custody of the commissioner for at least fifteen months and such parent has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has failed to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child;
 (E). [T]he parent of a child, under the age of seven years who is neglected or uncared for, has failed, is unable or is unwilling to achieve such degree of personal rehabilitation as would encourage the belief that within a reasonable amount of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such

parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families;"

CASES:

- In re Michael D., 58 Conn. App. 119, 124, 752 A.2d 1135 (2000), cert. den. 245 Conn. 911 (2000). "Our statutes clearly and explicitly recognize the state's authority to act before harm occurs to protect children whose health and welfare may be adversely affected and not just children whose welfare has been affected. The commissioner need not show, but need simply allege, that there is a potential for harm to occur."
- In re Kelly S., 29 Conn. App. 600, 613, 616 A.2d 1161 (1992). "Actual incidents of abuse or neglect are not required in determining that a child is uncared for under the "specialized needs" section of the statute For purposes of commitment of a child to the custody of the commissioner pursuant to 46b-129, proof of ongoing parenting deficiencies is sufficient to satisfy the statute where those deficiencies mean that the child's home is unable to provide the care required for her special needs."

**WEST KEY
NUMBERS:**

- *Infants* #156. Deprivation, neglect, or abuse

ENCYCLOPEDIAS:

- 59 AM JUR 2d *Parent and Child* (2002).
 - § 16. Termination of relationship
 - § 36. Loss or forfeiture of right
 - § 37. —Burden of proof
- 43 C.J.S. *Infants* (1978).
 - § 39. Termination of parental rights
 - § 40. _____. Policy considerations and determinative factors
 - § 72. Judgment and disposition of child; review. Termination of Parental Rights
- 32 POF3d 83 (1995). *Grounds For Termination Of Parental Rights*.
 - see [Table 18](#)
 - § 6. Neglect.
 - § 7. Abuse
- 3 POF2d 265 (1974). *Child Neglect*
 - §§ 25-43. Proof of physical neglect—malnutrition and lack of adequate clothing
 - §§ 44-71. Proof of emotional neglect—child's emotional well-being endangered by parent's disturbed condition
 - §§ 72-80. Proof of medical neglect—parent's refusal to consent to blood transfusion during surgery for alleviation of facial disfigurement
- 14 TRIALS 619 (1968). *Juvenile Court Proceedings*
 - § 8. Neglected children

TEXTS:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). CHAPTER 3, TERMINATION OF PARENTAL RIGHTS.
 - B. Failure to rehabilitate
 - E. Predictive failure to rehabilitate

LAW REVIEWS:

- Michael J. Keenan, Note, *Connecticut's Trend In The Termination Of Parental Rights And What Can Be Done To Further It*, 10 CONNECTICUT PROBATE LAW JOURNAL 269 (1996).
- John Gesmonde, Comment, *Emotional Neglect In Connecticut*, 5 CONNECTICUT LAW REVIEW 100 (1972).

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Failure To Rehabilitate

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to termination of parental rights in Connecticut on the grounds of parent's failure to rehabilitate themselves.
- SEE ALSO:**
- [§ 1.3d Neglected or Uncared for](#)
- DEFINITIONS:**
- **Personal rehabilitation** "as used in the statute refers to the restoration of a parent to his or her former constructive and useful role as a parent." *In re Migdalia M.*, 6 Conn. App. 194, 203, 504 A.2d 533 (1986).
 - **Two Prong Test:** "Both prongs of the test must be met to terminate parental rights for failure to achieve rehabilitation: one, that the parent has failed to achieve rehabilitation and, two, that there is no reason to believe that the parent could assume a responsible position in the life of the child within a reasonable time, *considering the age and needs of the child.*" *In re Roshawn R.*, 51 Conn. App. 44, 55, 720 A.2d 1112 (1998).
- STATUTES:**
- CONN. GEN. STAT. (2003).
 - § 17a-112(c)(B) and (E). Termination of parental rights of child committed to Commissioner of Children and Families
 - § 45a-717(g)(2)
 - (D). [T]he parent of a child who (i) has been found by the Superior Court or the Probate Court to have been neglected or uncared for in a prior proceeding, or (ii) is found to be neglected or uncared for and has been in the custody of the commissioner for at least fifteen months and **such parent** has been provided specific steps to take to facilitate the return of the child to the parent pursuant to section 46b-129 and has **failed to achieve such degree of personal rehabilitation** as would encourage the belief that within a reasonable time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child; (emphasis added).
 - (E). "[T]he parent of a child, under the age of seven years who is neglected or uncared for, has failed, is **unable or is unwilling to achieve such degree of personal rehabilitation** as would encourage the belief that within a reasonable amount of time, considering the age and needs of the child, such parent could assume a responsible position in the life of the child and such parent's parental rights of another child were previously terminated pursuant to a petition filed by the Commissioner of Children and Families;" (emphasis added).
- CASES:**
- *In re Vincent D.*, 65 Conn. App. 658, 669, 783 A.2d 534 (2001). "Pursuant to § 17a-112 (c) (3) (B), the failure of a parent to achieve sufficient personal rehabilitation is one of six grounds for termination of parental rights. This ground has been established if the parent of a child, after a

judicial finding of neglect, fails to achieve a degree of rehabilitation sufficient to encourage the belief that at some future date within a reasonable time, considering the age and needs of the child, the parent could assume a responsible position in the life of that child."

- In re Cesar G., 56 Conn. App. 289, 292-3, 742 A.2d 428 (2000). "The burden is clearly upon the persons applying for the revocation of commitment to allege and prove that cause for commitment no longer exists. Once that has been established, the inquiry becomes whether a continuation of the commitment will nevertheless serve the child's best interests. On this point, when it is the natural parents who have moved to revoke commitment, the state must prove that it would not be in the best interests of the child to be returned to his or her natural parents. In re Juvenile Appeal (Anonymous), 177 Conn. 648, 659, 420 A.2d 875 (1979).’ In re Thomas L., 4 Conn. App. 56, 57, 492 A.2d 229 (1985)."
- In Re Passionique T., 44 Conn. Sup. 551, 564, 695 A.2d 1107 (1996). "[T]he simple gauge for the existence of this ground is the answer to the question: Is the parent, on the adjudicatory date, any closer to being able to provide satisfactorily for the neglected child than she was on the date the child's custody was removed?"

**WEST KEY
NUMBERS:**

- *Infants*
#155. Dependent and neglected children; conflict with parental rights.
Termination of parental rights and other permanent actions
#156. _____. Deprivation, neglect or abuse

TEXTS:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). CHAPTER 3, TERMINATION OF PARENTAL RIGHTS.
B. Failure to rehabilitate
E. Predictive failure to rehabilitate

LAW REVIEWS:

- Sharon I. Farquharson, Comment, *The "Two Prong" Inquiry—The Best Alternative For Conflicting Rights Involved In Proceedings For Termination Of Parental Rights*, 13 CONNECTICUT .LAW REVIEW 709 (1981).

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lawrence.cheeseman@jud.state.ct.us

Section 4.3f

Parent Has Killed or Committed an Assault Upon Another Child of the Parent

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to termination of parental rights in Connecticut on the grounds of the deliberate killing or attempt to kill or committing an assault resulted in serious bodily injury upon another child of the parent.
- DEFINITIONS:**
- “[T]he parent has killed through deliberate, nonaccidental act another child of the parent or has requested, commanded, importuned, attempted, conspired or solicited such killing or has committed an assault, through deliberate, nonaccidental act that resulted in serious bodily injury of another child of the parent;” CONN.GEN. STATS. § 45a-717(g)(2)(F) (2003)
- STATUTES:**
- CONN. GEN. STAT. (2003)
§ 17a-112(j)(3)(F). [T]he parent has killed through deliberate, nonaccidental act another child of the parent or has requested, commanded, importuned, attempted, conspired or solicited such killing or has committed an assault, through deliberate, nonaccidental act that resulted in serious bodily injury of another child of the parent;
§ 45a-717(g)(2)(F).
- LEGISLATIVE:**
- 1998 CONN. ACTS 241 §§ 8 and 9
 - Conn. General Assembly, Office of Legislative Research, *Federal Adoption and Safe Families Requirements*, OLR Report 98-R-0627 (April 17, 1998). <http://www.cga.state.ct.us/ps98/rpt/olr/98-r-0627.doc>
- TEXTS:**
- RALPH H. FOLSOM & GAYLE B. WILHELM, *INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT* 3D (2002).
§ 5:8. Hearing, investigation and report, ground for termination of parental rights, consent terminations. See especially pp. 5-22 to – 23.
- COMPILER:** Lawrence Cheeseman, Connecticut Judicial Branch Law Library, One Court

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lawrence.cheeseman@jud.state.ct.us

Section 4.3g

Parent Convicted of Sexual Assault Resulting in Conception of the Child

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic sources relating to termination of parental rights in Connecticut upon the grounds of a conviction of sexual assault resulting in the conception of child.
- DEFINITIONS:**
- [T]he parent was convicted as an adult or a delinquent by a court of competent jurisdiction of sexual assault resulting in the conception of a child except for a violation of section 53a-71 or 53a-73a, provided the court may terminate such parent's parental rights to such child at any time after such conviction." CONN.GEN. STATS. § 45a-717(g)(2)(G) (2003)
- STATUTES:**
- CONN. GEN. STAT. (2003).
§ 17a-112(j)(3)(G). [T]he parent was convicted as an adult or a delinquent by a court of competent jurisdiction of a sexual assault resulting in the conception of the child, except a conviction for a violation of section 53a-71 or 53a-73a, provided the court may terminate such parent's parental rights to such child at any time after such conviction.
§ 45a-717(g)(2)(G).
- LEGISLATIVE:**
- 1998 CONN. ACTS 241 §§ 8 and 9.
 - 2000 CONN. ACTS 137 §§ 1 and 12
 - Conn. General Assembly, Office of Legislative Research, *Federal Adoption and Safe Families Requirements*, OLR Report 98-R-0627 (April 17, 1998). <http://www.cga.state.ct.us/ps98/rpt/olr/98-r-0627.doc>
- TEXTS:**
- RALPH H. FOLSOM & GAYLE B. WILHELM, INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT 3D (2002).
§ 5:8. Hearing, investigation and report, ground for termination of parental rights, consent terminations.
- COMPILER:** Lawrence Cheeseman, Connecticut Judicial Branch Law Library, One Court Street, Middletown. (860) 343-6560. [Email](mailto:lawrence.cheeseman@jud.state.ct.us)
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Table 19 Proof of Grounds for Terminating Parental Rights

Proof of Grounds for Terminating Parental Rights 32 POF 3d 83 (1995) Jacqueline D. Stanley	
II. Elements of Proof	
	§ 11. Proof of grounds for termination of parental rights; Checklist
III. Model Discovery	
	§ 12. Petitioner's interrogatories to defendant
IV. Proof of grounds for terminating parental rights	
A. Testimony of social worker	§ 13. Failure to provide appropriate supervision § 14. Failure to provide a stable home § 15. Failure to provide necessities § 16. Signs of alcohol or drug abuse § 17. Failure to provide contact, love or affection § 18. Failure to support, contact or plan for the future of child in foster care
B. Testimony of Psychologist	§ 20. Mental incapacity § 21. Emotional instability § 22. Overall observations
C. Testimony of Natural Father [Defendant]	§ 23. Failure to resume custody of a child in foster care § 24. Failure to provide financial support § 25. Failure to contact or communicate with child § 26. Incarceration § 27. Failure to use available resources
D. Testimony of Pediatrician	§ 28. Physical evidence of neglect or abuse § 29. Unexplained injuries § 30. Expert opinion that child has been abused
E. Testimony of Child Psychologist	§ 31. Expert opinion that termination is in the child's best interest

§ 4.4 Procedures in Termination of Parental Rights

A petition for termination of parental rights shall be entitled "In the interest of . . . (Name of child), a person under the age of eighteen years", and shall set forth with specificity: (1) The name, sex, date and place of birth, and present address of the child; (2) the name and address of the petitioner, and the nature of the relationship between the petitioner and the child; (3) the names, dates of birth and addresses of the parents of the child, if known, including the name of any putative father named by the mother, and the tribe and reservation of an American Indian parent; (4) if the parent of the child is a minor, the names and addresses of the parents or guardian of the person of such minor; (5) the names and addresses of: (A) The guardian of the person of the child; (B) any guardians ad litem appointed in a prior proceeding; (C) the tribe and reservation of an American Indian child; and (D) the child-placing agency which placed the child in his current placement; (6) the facts upon which termination is sought, the legal grounds authorizing termination, the effects of a termination decree and the basis for the jurisdiction of the court; (7) the name of the persons or agencies which have agreed to accept custody or guardianship of the child's person upon disposition. CONN. GEN. STATS. § 45a-715(b) (2003).

If the information required under subdivisions (2) and (6) of subsection (b) of this section is not stated, the petition shall be dismissed. If any other facts required under subdivision (1), (3), (4), (5) or (7) of subsection (b) of this section are not known or cannot be ascertained by the petitioner, he shall so state in the petition. If the whereabouts of either parent or the putative father named under subdivision (3) of subsection (b) of this section are unknown, the petitioner shall diligently search for any such parent or putative father. The petitioner shall file an affidavit with the petition indicating the efforts used to locate the parent or putative father. CONN. GEN. STATS. § 45a-715(c) (2003).

Section 4.4a

Jurisdiction

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to jurisdictions of the Probate and Superior (Juvenile) courts in a termination of parental rights in Connecticut (effective January 1, 2003).
- DEFINITIONS:**
- **Probate Court:** “A petition under this section shall be filed in the court of probate for the district in which the petitioner or the child resides or, in the case of a minor who is under the guardianship of any child care facility or child-placing agency, in the court of probate for the district in which the main office or any local office of the agency is located. If the petition is filed with respect to a child born out of wedlock, the petition shall state whether there is a putative father to whom notice shall be given under subdivision (2) of subsection (b) of section 45a-716.” CONN. GEN. STATS. § 45a-715(e) (2003).
 - **Superior Court:** “Before a hearing on the merits in any case in which a petition for termination of parental rights is contested in a court of probate, the Court of Probate shall, on the motion of any legal party except the petitioner or may on its own motion or that of the petitioner, under rules adopted by the judges of the Supreme Court, transfer the case to the Superior Court.” CONN. GEN. STATS. § 45a-715(g) (2003).
 - **Transfer to Another Judge of Probate:** “In addition to the provisions of this section, the Probate Court may, on the court's own motion or that of any interested party, transfer the case to another judge of probate, which judge shall be appointed by the Probate Court Administrator from a panel of qualified probate judges who specialize in children's matters. Such panel shall be proposed by the Probate Court Administrator and approved by the executive committee of the Connecticut Probate Assembly. The location of the hearing shall be in the original probate court, except upon agreement of all parties and the Department of Children and Families, where applicable.” CONN. GEN. STATS. § 45a-715(g) (2003) as amended by 2001 CONN. ACTS 195 § 98.
 - **Transfer:** “If the case is transferred, the clerk of the Court of Probate shall transmit to the clerk of the Superior Court or the probate Court to which the case was transferred, the original files and papers in the case. The Superior Court or the probate court to which the case was transferred, upon hearing after notice as provided in sections 45a-716 and 45a-717, may grant the petition as provided in section 45a-717.” CONN. GEN. STATS. § 45a-715(g) (2003).
- STATUTES:**
- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to Commissioner of Children and Families
 - § 45a-715. Petition to terminate parental rights
 - § 45a-716. Hearing on petition to terminate parental rights. Notice.

§ 45a-717. Termination of parental rights. Conduct of hearing.
Investigation and report.

COURT RULES:

- CONN. PROBATE PRACTICE BOOK (4th ed. rev. 2000).
Rule 7. Transfer of contested petitions of parental rights from Courts of Probate to the Juvenile Court.
 - 7.1. Motion to transfer by any legal party except petitioner
 - 7.2. Motion to transfer by petitioner or court of probate
 - 7.3. Where and when to file motion to transfer—copies
 - 7.4. Contents of motion to transfer—who may file
 - 7.5. Notice of transfer on motion by court of probate under Rule 7.2
 - 7.6. Schedule of hearing and notice of hearing on motion by petitioner to transfer under Rule 7.2
 - 7.7. Decree on motion to transfer under Rule 7.1
 - 7.8. Administrative actions upon granting of motion to transfer
 - 7.9. Copies of juvenile decrees and appeals
- CONN. PRACTICE BOOK (2003)
Chapter 35a. Hearings concerning neglected, uncared for and dependent children and termination of parental rights
§ 35a-19. Transfer from Probate Court of petitions for removal of parents as guardians or termination of parental rights

CASES:

- In re Lori Beth D., 21 Conn. App. 226, 229, 572 A.2d 1027 (1990). “We read this rule [7.2 of the Probate Court Rules] to mean that whether a hearing is held on a petitioner’s motion to transfer is within the discretion of the Probate Court, but that *if* the court, in fact, decides to hold a hearing, notice of such ‘hearing,’ in accordance with the procedure set out in Rule 7.6, becomes mandatory.”
- In re Theresa S., 196 Conn. 18, 30, 491 A.2d 355 (1985). “The parents’ rights can be terminated without an ensuing adoption.”

TEXTS:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). Chapter 3, Termination of Parental Rights.
21. Termination petitions.
A. Introduction

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Section 4.4b

Petition for TPR

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the content, form and amendment of a petition for termination of parental rights in Connecticut (effective January 1, 2003).

DEFINITIONS:

- **Petition** "means a formal pleading, executed under oath alleging that the respondent is within the judicial authority's jurisdiction to adjudicate the matter which is the subject of the petition by reason of cited statutory provisions and seeking a disposition. Except for a petition for erasure of record, such petitions invoke a judicial hearing and shall be executed by any one of the parties authorized to do so by statute, provided a delinquency petition may be executed by either a probation officer or juvenile prosecutor." CONN. PRACTICE BOOK § 26-1(j) (2003).
- **Diligently search:** "If the whereabouts of either parent or the putative father named under subdivision (3) of subsection (b) of this section are unknown, the petitioner shall diligently search for any such parent or putative father. The petitioner shall file an affidavit with the petition indicating the efforts used to locate the parent or putative father." CONN. GEN. STAT. §45a-715(c) (2003).
- **Statutory parent:** "means the Commissioner of Children and Families or the child-placing agency appointed by the court for the purpose of giving a minor child or minor children in adoption;" CONN. GEN. STAT. §45a-707(7). (2003). See [Table 7](#)

STATUTES:

- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to the Commissioner of Children and Families.
 - (a). The petition shall be in the form and contain the information set forth in subsection (b) of section 45a-715, and be subject to the provisions of subsection (c) of said section.
 - § 45a-715. Petition to terminate parental rights
 - (b). [\[Full text § 4 supra\]](#)
 - (c). If the information required under subdivisions (2) and (6) of subsection (b) of this section is not stated, the petition shall be dismissed . . . [\[Full text § 4 supra\]](#)
 - (f). If any petitioner under subsection (a) is a minor or incompetent, the guardian ad litem, appointed by the court in accordance with section 45a-708, must approve the petition in writing, before action by the court.

COURT RULES

- CONN. PRACTICE BOOK (2003).
Procedures in Juvenile Matters
Chapter 33a. Petitions for neglect, uncared for, dependency and

termination of parental rights: initiation of proceedings, orders of temporary custody and preliminary hearings

§ 33a-1. Initiation of judicial proceeding: Contents of petitions and summary of facts

§ 33a-2. Service of summons, petitions and ex parte orders

§ 33a-3. Venue

§ 33a-4. Identity or location of respondent unknown

§ 33a-5. Address of person entitled to personal service unknown

§ 33a-6. Order of temporary custody; Ex parte orders and orders to appear

§ 33a-7. Preliminary hearing

§ 33a-8. Emergency, life-threatening medical situations—Procedures

FORMS:

- Probate Court
PC-600. Application, termination of parental rights
- Superior Court, Juvenile Matters
JD-JM-40 Rev. 9-2000. Notice/Summons and Order for Hearing – Termination of Parental Rights
- *Cause Of Action For Adoption Without Consent Of Parent On Ground Of Abandonment*, 16 COA 219 (1988).
§ 35. Sample petition
§ 36. Sample answer
- 19 AM JUR PLEADING AND PRACTICE FORMS *Parent and Child* (1997 rev.)
§ 123. Petition or application—To terminate parental rights of incompetent parent—By state agency and foster parent

CASES:

- *In re Eden F.*, 48 Conn. App. 290, 710 A.2d 771 (1998). “Our rules of practice require that ‘[a] summary of the facts substantiating the allegations of the petition shall be attached thereto and shall be incorporated by reference.’ Practice Book § 1041.1 (2), now Practice Book (1998 Rev.) § 32-1 (b).”
- *In re Angellica W.*, 49 Conn. App. 541, 548, 714 A.2d 1265 (1998). “The trial court, however, correctly pointed out that “actually, it’s a matter of proof, really, rather than whether they have the right to amend. I think they have the right to amend, to allege whatever they want and the burden is on them to prove whatever they allege.” Furthermore, Practice Book § 1055.1, now Practice Book (1998 Rev.) § 35-1 . . . provides that amendments to the petition may be made at any time prior to a final adjudication. We will not disturb the trial court’s decision to allow amendments to the petition unless there has been an abuse of discretion Since the rules of practice allow amendment, we cannot say that the trial court abused its discretion in this case by allowing amendment of the termination petition.”
- *In re Bruce R.*, 34 Conn. App. 176, 181, 640 A.2d 643 (1994). “We conclude that under the present statutory scheme a parent may petition for the termination of his or her own parental rights and that a petition for the termination of parental rights is not dependent on a pending adoption or state custodial placement.”

TEXTS:

- RALPH H. FOLSOM & GAYLE B. WILHELM, *INCAPACITY, POWERS OF ATTORNEY AND ADOPTION IN CONNECTICUT* 3D (2002).
§ 5:6. Termination of parental rights and appointment of guardian or statutory parent for adoption petition

- PETER L. COSTAS, MANAGING ED., *LAWYERS' DESKBOOK: A REFERENCE MANUAL*, (2d ed. 2000).
Lynn B. Cochrane, *Child Protection*. "Termination of Parental Rights," pp. XVII-19.
- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT* (1997). Chapter 3, Termination of Parental Rights.
§ 21. Termination petitions

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Table 20 Statutory Parent

Statutory Parent	
Definition	“the Commissioner of Children and Families or the child-placing agency appointed by the court for the purpose of giving a minor child or minor children in adoption;” CONN. GEN. STAT. § 45a-707(7). (2003)
Appointment	CONN. GEN. STAT. §§ 45a-717, 45a-718(a), 17a-112 (2003)
Duties	CONN. GEN. STAT. § 45a-718(b) (2003)
Removal	CONN. GEN. STAT. § 45-718(c) (2003)
Resignation	CONN. GEN. STAT. § 45-718(c) (2003)

Section 4.4c

Parties and Standing in TPR Proceedings

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to what persons or agencies have standing to bring a termination of parental rights in Connecticut.
- DEFINITIONS:**
- **Child (Probate Court):** “[P]rovided in any case hereunder where the child with respect to whom the petition is brought has attained the age of **twelve**, the child shall be joined in the petition.” CONN. GEN. STAT. § 45a-715(a) (2003) (emphasis added).
 - **Child (Superior Court):** “In respect to any child in the custody of the Commissioner of Children and Families in accordance with section 46b-129, either the commissioner, or the attorney who represented such child in a pending or prior proceeding, or an attorney appointed by the Superior Court on its own motion, or an attorney retained by such child after attaining the age of **fourteen**, may petition the court for the termination of parental rights with reference to such child.” CONN. GEN. STATS. § 17a-112(a) (2003) (emphasis added).
 - **Relative:** “means any person descended from a common ancestor, whether by blood or adoption, not more than three generations removed from the child;” CONN. GEN. STAT. § 45a-707(6) (2003).
- STATUTES:**
- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to the Commissioner of Children and Families.
 - § 45a-715. Petition to terminate parental rights
 - (a). see [Table 8](#)
- CASES:**
- In re Bruce R., 34 Conn. App. 176, 181, 640 A.2d 643 (1994). “We conclude that under the present statutory scheme a parent may petition for the termination of his or her own parental rights and that a petition for the termination of parental rights is not dependent on a pending adoption or state custodial placement.”
- ENCYCLOPEDIAS:**
- Michael G. Walsh, Annotation, *Standing Of Foster Parent To Seek Termination Of Rights Of Foster Child’s Natural Parent*, 21 ALR4th 535 (1983).
- TEXTS:**
- PETER L. COSTAS, MANAGING ED., *LAWYERS’ DESKBOOK: A REFERENCE MANUAL*, (2d ed. 2000).
Lynn B. Cochrane, *Child Protection*. “Termination of Parental Rights,”

pp. XVII-19.

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). Chapter 3, Termination of Parental Rights.
 - § 8. Neglect petitions
 - B. Parties and standing
 - § 21. Termination petitions
 - B. Parties and standing
- SANDRA MORGAN LITTLE, CHILD CUSTODY AND VISITATION LAW AND PRACTICE (2002).
 - Chapter 28. Termination of parental rights
 - § 28.02(3). Standing to maintain proceedings
 - [a]. In general
 - [b]. Foster parent standing
 - [c]. Grandparent standing
 - [d]. Child standing

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lawrence.cheeseman@jud.state.ct.us

Table 21 Who May Petition for TPR

CONN. GEN. STAT. § 45a-715(a) (2003)	
“Any of the following persons may petition the Court of Probate to terminate parental rights of all persons who may have parental rights regarding any minor child or for the termination of parental rights of only one parent provided the application so states:	
(1)	Either or both parents, including a parent who is a minor;
(2)	the guardian of the child
(3)	the selectmen of any town having charge of any foundling child;
(4)	a duly authorized officer of any child care facility or child-placing agency or organization or any children's home or similar institution approved by the Commissioner of Children and Families;
(5)	a relative of the child if the parent or parents have abandoned or deserted the child;
(6)	the Commissioner of Children and Families, provided the custodial parent of such minor child has consented to the termination of parental rights and the child has not been committed to the commissioner, and no application for commitment has been made;

Section 4.4d

Notice

A Guide to Resources in the Law Library

SCOPE: Bibliographic resources relating to notice in a TPR proceeding.

SEE ALSO:

- [§ 1e. Notice and opportunity to be heard](#)

DEFINITIONS:

- **Persons to receive notice:** “The court shall cause notice of the hearing to be given to the following persons as applicable: (1) The parent or parents of the minor child, including any parent who has been removed as guardian on or after October 1, 1973, under section 45a-606; (2) the father of any minor child born out of wedlock, provided at the time of the filing of the petition (A) he has been adjudicated the father of such child by a court of competent jurisdiction, or (B) he has acknowledged in writing that he is the father of such child, or (C) he has contributed regularly to the support of such child, or (D) his name appears on the birth certificate, or (E) he has filed a claim for paternity as provided under section 46b-172a, or (F) he has been named in the petition as the father of the child by the mother; (3) the guardian or any other person whom the court shall deem appropriate; (4) the Commissioner of Children and Families.” CONN. GEN. STATS. §45a-716(b) (2003)
- **Representation by counsel:** “If the recipient of the notice is a person described in subdivision (1) or (2) of this subsection or is any other person whose parental rights are sought to be terminated in the petition, the notice shall contain a statement that the respondent has the right to be represented by counsel and that if the respondent is unable to pay for counsel, counsel will be appointed for the respondent.” CONN. GEN. STATS. §45a-716(b) (2003)
- **Service:** “Except as provided in subsection (d) of this section, notice of the hearing and a copy of the petition, certified by the petitioner, the petitioner's agent or attorney, or the court clerk, shall be served at least ten days before the date for the hearing by personal service or service at the person's usual place of abode on the persons enumerated in subsection (b) of this section who are within the state, and by certified mail, return receipt requested, on the Commissioner of Children and Families.” CONN. GEN. STATS. §45a-716(c) (2003)
- **Out of state or unknown persons:** “If the address of any person entitled to personal service or service at the person's usual place of abode is unknown, or if personal service or service at the person's usual place of abode cannot be reasonably effected within the state or if any person enumerated in subsection (b) of this section is out of the state, a judge or clerk of the court shall order notice to be given by registered or certified mail, return receipt requested, or by publication at least ten days before the date of the hearing. Any publication shall be in a newspaper of general circulation in the place of the last-known address of the person to be notified, whether within or without this state, or if no such address is known, in the place where the

termination petition has been filed.” CONN. GEN. STATS. §45a-716(c) (2003)

- **Certified mail; Notice by publication:** “In any proceeding pending in the Court of Probate, in lieu of personal service on a parent or the father of a child born out of wedlock who is either a petitioner or who signs under penalty of false statement a written waiver of personal service on a form provided by the Probate Court Administrator, the court may order notice to be given by certified mail, return receipt requested, deliverable to addressee only and at least ten days prior to the date of the hearing. If such delivery cannot reasonably be effected, or if the whereabouts of the parents is unknown, then notice shall be ordered to be given by publication, as provided in subsection (c) of this section.” CONN. GEN. STATS. §45a-716(d) (2003)

STATUTES:

- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to the Commissioner of Children and Families.
 - (i). The Superior Court upon hearing and notice, as provided in sections 45a-716 and 45a-717, may grant a petition for termination of parental rights based on consent
 - (j). The Superior Court upon hearing and notice, as provided in sections 45a-716 and 45a-717, may grant a petition for termination of parental rights pursuant to this section
 - § 45a-716. Hearing on petition to terminate parental rights. Notice.
 - § 45a-717. Termination of parental rights. Conduct of hearing.
 - (a). At the hearing held on any petition for the termination of parental rights filed in the Court of Probate under section 45a-715, or filed in the Superior Court under section 17a-112, or transferred to the Superior Court from the Court of Probate under section 45a-715, any party to whom notice was given shall have the right to appear and be heard with respect to the petition

CASES:

- In re Savanna M., 55 Conn. App. 807, 811, 740 A.2d 484 (1999). “Although the commissioner did fail to check the box on the termination petition representing that the department made reasonable efforts toward reunification, the succeeding paragraphs of the petition alleging abandonment; lack of personal rehabilitation; denial of care, guidance and control by acts of omission or commission; and no ongoing parent-child relationship provided the respondent adequate notice of the proceedings against him.”
- In re Samantha B., 45 Conn. Supp. 468, 469, 722 A.2d 300 (1997), aff’d 51 Conn. App. 376 (1998), cert. den. 248 Conn. 902 (1999). “The mother’s failure to object this late scheduling of the initial hearing thus constitutes a waiver of any right she might have had to do.”
- In re Jason P., 41 Conn. Supp. 23, 27, 549 A.2d 286 (1988). “With respect to a termination petition, service is required for parents, including a parent who has been removed as guardian and certain putative fathers. General Statutes § 45-61d (b)[now 45a-716]. All other persons desiring to participate, including the paternal grandmother in this case, are, by terminology, equitable parties whose intervention is discretionary with the court.”

WEST KEY

- *Infants* # 198. Notice

NUMBERS:

TEXTS:

- PETER L. COSTAS, MANAGING ED., LAWYERS' DESKBOOK: A REFERENCE MANUAL, (2d ed. 2000).
Lynn B. Cochrane, *Child Protection*. "Termination of Parental Rights," pp. XVII-19.
- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). Chapter 3, Termination of Parental Rights.
21. Termination petitions
B. Parties and standing

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Section 4.4e

TPR Hearing

A Guide to Resources in the Law Library

SCOPE:

Bibliographic resources relating to the hearing on a petition to terminate parental rights (effective January 1, 2003).

DEFINITIONS:

- **Two Phases:** “The hearing on a petition to terminate parental rights consists of a two phases, adjudication and disposition In the adjudicatory phase, the trial court determines whether one of the statutory grounds for termination of parental rights exists by clear and convincing evidence. If the trial court determines that a statutory ground for termination exists, it proceeds to the dispositional phase. In the dispositional phase, the trial court determines whether termination is in the best interest of the child.” *In re Tabitha P.*, 39 Conn. App. 353, 360, 664 A.2d 1168 (1995).
- **Seven Factors:** “In the dispositional phase of a termination of parental rights hearing, the trial court must determine whether it is established by clear and convincing evidence that the continuation of the respondent's parental rights is not in the best interest of the child. In arriving at this decision, the court is mandated to consider and make written findings regarding seven factors delineated in § 17a-112 (d).” *Ibid.*, 361-362.
- **Co-Terminous Petition:** “Any petition brought by the Commissioner of Children and Families to the Superior Court, pursuant to subsection (a) of section 46b-129, may be accompanied by or, upon motion by the petitioner, consolidated with a petition for termination of parental rights filed in accordance with this section with respect to such child. Notice of the hearing on such petitions shall be given in accordance with sections 45a-716 and 45a-717. The Superior Court, after hearing, in accordance with the provisions of subsection (i) or (j) of this section, may, in lieu of granting the petition filed pursuant to section 46b-129, grant the petition for termination of parental rights as provided in section 45a-717.” CONN. GEN. STATS. § 17a-112(l) (2003)

STATUTES:

- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to the Commissioner of Children and Families.
 - § 45a-715. Petition to terminate parental rights
 - § 45a-716. Hearing on petition to terminate parental rights. Notice
 - § 45a-717. Termination of parental rights. Conduct of hearing. Investigation and report.

COURT RULES:

- CONN. PRACTICE BOOK (2003)
 - Procedures in Juvenile Matters
 - Chapter 32a. Rights of parties neglected, uncared for and dependent children and termination of parental rights
 - § 32a-1. Right to counsel and to remain silent

§ 32a-2. Hearing procedure; Subpoenas
§ 32a-3. Standards of proof
§ 32a-4. Child witness
§ 32a-5. Child in the court
§ 32a-6. Interpreter
§ 32a-7. Records
§ 32a-8. Use of confidential alcohol and drug abuse treatment records as evidence

Chapter 34a. Pleadings, motions, and discovery neglected, uncared for and dependent children and termination of parental rights

Chapter 35a. Hearing concerning neglected, uncared for and dependent children and termination of parental rights

§ 35a-3. Conterminous petitions

§ 35a-19. Transfer from probate court of petitions for removal of parents as guardian or termination of parental rights

§ 35a-21. Appeals

CASES:

- In re Eden F., 48 Conn. App. 290, 305-306, 710 A.2d 771 (1998). “A petition to terminate parental rights consists of two phases, adjudicatory and dispositive. Practice Book §§ 1042.1 and 1043.1, now Practice Book (1998 Rev.) §§ 33-1 and 33-5. See In re Romance M., 229 Conn. 345, 356, 641 A.2d 378 (1994). It is not necessary, however, that the two phases be the subject of separate hearings. One unified trial, as occurred in the two petitions that are the subject of the appeal now before us, is permissible.”

TEXTS:

- PETER L. COSTAS, MANAGING ED., *LAWYERS’ DESKBOOK: A REFERENCE MANUAL*, (2d ed. 2000).
Lynn B. Cochrane, *Child Protection*. “Termination of Parental Rights,” pp. XVII-19.
- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT* (1997). Chapter 3, Termination of Parental Rights.
21. Termination petitions
B. Parties and standing

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Reasonable Effort to Locate and Reunify

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the requirement that Department of Children and Families make reasonable efforts to locate the parent and to reunify the child with the parent.
- DEFINITIONS:**
- **Reasonable Efforts Finding:** “The Superior Court, upon hearing and notice as provided in sections 45a-716 and 45a-717, may grant a petition filed pursuant to this section if it finds by clear and convincing evidence (1) that the Department of Children and Families has made reasonable efforts to locate the parent and to reunify the child with the parent, unless the court finds in this proceeding that the parent is unable or unwilling to benefit from reunification efforts provided such finding is not required if the court has determined at a hearing pursuant to subsection (b) of section 17a-110 or section 17a-111b that such efforts are not appropriate,” CONN. GEN. STATS. § 17a-112(j) (2003).
 - **Reasonable efforts:** “In our view, reasonable efforts means doing everything reasonable, not everything possible.” *In re Eden F.*, 48 Conn. App. 290, 312, 710 A.2d 771 (1998).
- STATUTES:**
- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to the Commissioner of Children and Families.
 - § 45a-717. Petition to terminate parental rights
- CASES:**
- *In re Kachainy C.*, 67 Conn. App. 401, 411, 787 A.2d 592 (2001). “The language of § 17a-112 (c) is clear: a finding that it is no longer appropriate for the department to make reasonable efforts to reunite the family must be made only once, either at an extension hearing or at a termination hearing. Common sense also tells us that it would be a waste of judicial resources to require courts to make redundant findings.”
 - *In re Rachel M.*, 58 Conn. App. 448, 449, 755 A.2d 266 (2000). “As this court has often stated, ‘On appeal, our function is to determine whether the trial court’s conclusion was legally correct and factually supported. We do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached . . . nor do we retry the case or pass upon the credibility of the witnesses. . . . Rather, on review by this court every reasonable presumption is made in favor of the trial court’s ruling. . . . [W]e will disturb the findings of the trial court in both the adjudication and disposition phases only if they are clearly erroneous. . . . The trial court’s ruling on [the issue of whether reasonable efforts were

made] should not be disturbed on appeal unless, in light of the evidence in the entire record, it is clearly erroneous. *In re Tabitha P.*, 39 Conn. App. 353, 361, 664 A.2d 1168 (1995).’ (Internal quotation marks omitted.) *In re Savanna M.*, 55 Conn. App. 807, 812-13, 740 A.2d 484 (1999).

- *In re Amanda A.*, 58 Conn. App. 451, 755 A.2d 243 (2000).
- *In re Terrance C.*, 58 Conn. App. 389, 755 A.2d 232 (2000).
- *In re Amber B.*, 56 Conn. App. 776, 746 A.2d 222 (2000).
- *In re Antonio M.*, 56 Conn. App. 534, 744 A.2d 915 (2000).
- *In re Eden F.*, 250 Conn. 674, 741 A.2d 873, reargument den. 251 Conn. 924 (1999).

**WEST KEY
NUMBERS:**

- *Infants*
 - #231. Modification, vacation, or extension of order or placement.
Returning child to parents
 - #252. Review. Questions of law and fact

TEXTS:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). Chapter 3, Termination of Parental Rights.
 - § 25. Nonconsensual termination: other requirements
 - C. Reasonable efforts finding

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Section 4.4g

Statutory Factors

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to the seven statutory factors the courts consider in TPR proceedings in Connecticut.
- SEE ALSO**
- [Table 9: Statutory Factors Considered in TPR](#)
- DEFINITIONS:**
- **Factors:** “Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding . . . [six factors see [Table 9](#) for list]” CONN. GEN. STATS. §§ 17-112(k) and 45a-717(h) (2003).
- STATUTES:**
- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to the Commissioner of Children and Families.
 - (k). see [Table 9](#) for text
 - § 45a-717. Petition to terminate parental rights
 - (h). see [Table 9](#) for text
- CASES:**
- *In re Quanitra M.*, 60 Conn. App. 96, 104, 758 A.2d 863 (2000). “The seven factors set forth in § 17a-112 (e)[now (k)] serve simply as guidelines to the court and are not statutory prerequisites that need to be proven before termination can be ordered As a result, there is no requirement that each factor be proven by clear and convincing evidence.”
 - *In re Barbara J.*, 215 Conn. 31, 47, 574 A.2d 203 (1990). “Whether the six factors listed in 17-43a (d) [now 17a-112(k)] are expressly considered in conjunction with or subsequent to the trial court's determination of whether the petitioner has produced the statutorily required proof of at least one of the alternatives listed in 17-43a (b) is without significance as long as no judgment of termination is rendered until after there has been full compliance with 17-43a. Although 17-43a does not mandate a bifurcated hearing, it does command a termination decision that clearly identifies the concerns of subsections (b), and (d). Bifurcating the termination decision, however enables the trial court to focus clearly on the statutory requirements of each subsection.”
- WEST KEY NUMBERS:**
- *Infants*
 - #155. Dependent, neglected, and delinquent children. Termination of rights or other permanent action
 - #178. Evidence. Termination of parental rights
 - #210. Verdict, finding or determination
- TEXTS:** PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN

CONNECTICUT (1997). Chapter 3, Termination of Parental Rights.
 § 25. Nonconsensual termination: other requirements
 B. Seven dispositional factors

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Table 22 Statutory Factors Considered in TPR

Conn. Gen. Stats. §§ 17a-112(k) and 45a-717(h) (2003) Except in the case where termination is based on consent, in determining whether to terminate parental rights under this section, the court shall consider and shall make written findings regarding:	
(1)	The timeliness, nature and extent of services offered, provided and made available to the parent and the child by a child-placing agency to facilitate the reunion of the child with the parent;
(2)	whether the Department of Children and Families has made reasonable efforts to reunite the family pursuant to the federal Adoption Assistance and Child Welfare Act of 1980, as amended;
(3)	the terms of any applicable court order entered into and agreed upon by any individual or agency and the parent, and the extent to which all parties have fulfilled their obligations under such order;
(4)	the feelings and emotional ties of the child with respect to the child's parents, any guardian of the child's person and any person who has exercised physical care, custody or control of the child for at least one year and with whom the child has developed significant emotional ties;
(5)	the age of the child
(6)	the efforts the parent has made to adjust such parent's circumstances, conduct or conditions to make it in the best interest of the child to return the child to the parent's home in the foreseeable future, including, but not limited to, (A) the extent to which the parent has maintained contact with the child as part of an effort to reunite the child with the parent, provided the court may give weight to incidental visitations, communications or contributions and (B) the maintenance of regular contact or communication with the guardian or other custodian of the child;
(7)	the extent to which a parent has been prevented from maintaining a meaningful relationship with the child by the unreasonable act or conduct of the other parent of the child, or the unreasonable act of any other person or by the economic circumstances of the parent.

Section 4.4h

Motion to Open or Set Aside

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to a motion to open or set aside a judgment terminating parental rights.
- DEFINITIONS:**
- **Motion to open or set aside:** “The court may grant a motion to open or set aside a judgment terminating parental rights pursuant to section 52-212 or 52-212a or pursuant to common law or may grant a petition for a new trial on the issue of the termination of parental rights, provided the court shall consider the best interest of the child, except that no such motion or petition may be granted if a final decree of adoption has been issued prior to the filing of any such motion or petition.” CONN. GEN. STATS. § 45a-719 (2003).
 - **Evidence:** “Any person who has legal custody of the child or who has physical custody of the child pursuant to an agreement, including an agreement with the Department of Children and Families or a licensed child-placing agency, may provide evidence to the court concerning the best interest of the child at any hearing held on the motion to reopen or set aside a judgment terminating parental rights.” Ibid.
 - **Best interest of the child:** “For the purpose of this section, ‘best interest of the child’ shall include, but not be limited to, a consideration of the age of the child, the nature of the relationship of the child with the caretaker of the child, the length of time the child has been in the custody of the caretaker, the nature of the relationship of the child with the birth parent, the length of time the child has been in the custody of the birth parent, any relationship that may exist between the child and siblings or other children in the caretaker’s household, and the psychological and medical needs of the child. The determination of the best interest of the child shall not be based on a consideration of the socio-economic status of the birth parent or the caretaker.” Ibid.
- STATUTES:**
- CONN. GEN. STAT. (2003)
§ 45a-719. Reopening judgment terminating parental rights. Best interest of child. Final decree of adoption
- CASES:**
- In re Salvatore P., 74 Conn. App. 23, 27, 812 A2d 70 (2002). “In seeking to open the termination judgments, the respondent had the burden at the hearing to do more than assert an unadorned claim that due to duress, she was unable to attend the termination trial.”

TEXTS:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997). Chapter 3, Termination of Parental Rights.
§ 26. Post-judgment procedures
B. Motions to open

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Appeals to Appellate Court

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to appeals of TPR judgments.
- SEE ALSO:**
- [§ 1.4j. Standards of Appellate Review](#)
- DEFINITIONS:**
- “Appeals from final judgments or decisions of the superior court in juvenile matters shall be taken within twenty days from the issuance of notice of the rendition of the judgment or decision from which the appeal is taken in the manner provided by the rules of appellate procedure.” CONN. PRACTICE BOOK § 35-4(a) (2003).
- STATUTES:**
- CONN. GEN. STAT. (2003)
 - § 46b-142. Appeal to Appellate Court.
 - (b). The Department of Children and Families, or any party at interest aggrieved by any final judgment or order of the court, may appeal to the Appellate Court in accordance with the provisions of section 52-263. The clerk in charge of such juvenile matters shall forthwith, after notice of any appeal, prepare and file with the clerk of the Appellate Court the certified copy of the record of the case from which such appeal has been taken. The name of the child or youth involved in any such appeal shall not appear on the record of the appeal, and the records and papers of any juvenile case filed in the Appellate Court shall be open for inspection only to persons having a proper interest therein and upon order of the court.
 - (c). Pending such appeal, the Superior Court may cause the child or youth to be detained in some suitable place as the court may direct, or may release the child or youth in the care of a parent, probation officer or other suitable person, and may require the appellant to enter into a bond or recognizance to the state, with surety or security conditioned that the child or youth shall appear before the Appellate Court and abide by the order and judgment.
 - (d). Notwithstanding subsections (a), (b) and (c) of this section, the Department of Children and Families, or any party to the action aggrieved by a final judgment in a termination of parental rights proceeding, shall be entitled to an **expedited hearing** before the Appellate Court. A final decision of the Appellate Court shall be issued as soon as practicable after the date on which the certified copy of the record of the case is filed with the clerk of the Appellate Court. [emphasis added].
 - § 46b-143. Sec. 46b-143. Notice of appeal.
- COURT RULES:**
- CONN. PRACTICE BOOK (2003).
 - Chapter 35a. Hearings concerning neglected, uncared for and dependent children and termination of parental rights

§ 35a-21. Appeal

- (b). If an indigent party wishes to appeal a final decision and if the trial counsel declines to represent the party because in counsel's professional opinion the appeal lacks merit, counsel shall file a timely motion to withdraw and to extend time in which to take an appeal. The judicial authority shall then forthwith appoint another attorney to review this record who, if willing to represent the party on appeal, will be appointed for this purpose. If the second attorney determines that there is no merit to an appeal, that attorney shall make this known to the judicial authority at the earliest possible moment, and the party will be informed by the clerk forthwith that the party has the balance of the extended time to appeal in which to secure counsel who, if qualified, may be appointed to represent the party on the appeal.

Chapter 79. Appeals in Juvenile Matters

§ 79-1. Time to take; Form; costs

§ 79-2. Clerk's duties

§ 79-3. Inspection of records

§ 79-4. Hearings; confidentiality

TEXTS:

- PAUL CHILL, THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT (1997).

§ 17. Appeals

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Section 4.4j

Standards of Appellate Review

A Guide to Resources in the Law Library

- SCOPE:** Bibliographic resources relating to standards of review in termination of parental rights
- DEFINITIONS:**
- “On appeal, we will disturb the findings of the trial court in both the adjudication and disposition only if they are clearly erroneous.” *In re Tabitha P.*, 39 Conn. App. 353, 362, 664 A.2d 1168 (1995)
- STATUTES:**
- CONN. GEN. STAT. (2003)
 - § 17a-112. Termination of parental rights of child committed to the Commissioner of Children and Families.
 - § 45a-715. Petition to terminate parental rights
- CASES:**
- *In re Stanley D.*, 61 Conn. App. 224, 229, 763 A.2d 224 (2000). “Our standard of review is well settled in termination of parental rights cases. We will overturn a finding of fact that a parent has failed to achieve rehabilitation only if it is clearly erroneous in light of the evidence in the record. *In re Eden E.*, 250 Conn. 674, 705, 741 A.2d 873 (1999). We construe the facts in favor of the court's judgment because of the court's opportunity as the trier of fact to scrutinize the evidence, and to hear and observe the witnesses during trial. *Id.* “We do not examine the record to determine whether the trier of fact could have reached a conclusion other than the one reached.” (Internal quotation marks omitted.) *Id.*; see *In re Luis C.*, 210 Conn. 157, 166, 554 A.2d 722 (1989). Our function is to determine whether the court's conclusions were legally correct and factually supported. *In re Roshawn R.*, 51 Conn. App. 44, 51, 720 A.2d 1112 (1998).”
 - *In re Deana E.*, 61 Conn. App. 197, 205, 763 A.2d 45 (2000). “Our standard of review of a court's decision to bifurcate a termination of parental rights hearing is well settled. The decision whether to bifurcate a termination of parental rights proceeding lies solely within the discretion of the trial court. See *State v. Anonymous*, 179 Conn. 155, 172-74, 425 A.2d 939 (1979); see also *In re Tabitha P.*, 39 Conn. App. 353, 360 n. 6, 664 A.2d 1168 (1995). “In reviewing claims that the trial court abused its discretion the unquestioned rule is that great weight is due to the action of the trial court and every reasonable presumption should be given in favor of its correctness; the ultimate issue is whether the court could reasonably conclude as it did” (Internal quotation marks omitted.) *In re Jose C.*, 11 Conn. App. 507, 508, 512 A.2d 1239 (1987).”

**WEST KEY
NUMBERS:**

- *Infants* # 252. Review. Questions of law and fact.

TEXTS:

- PETER L. COSTAS, MANAGING ED., *LAWYERS' DESKBOOK: A REFERENCE MANUAL*, (2d ed. 2000).
Lynn B. Cochrane, *Child Protection*. "Termination of Parental Rights," pp. XVII-19.
- PAUL CHILL, *THE LAW OF CHILD ABUSE AND NEGLECT IN CONNECTICUT* (1997). Chapter 3, Termination of Parental Rights.
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Table 23 Cooperative Postadoption Agreements

Cooperative Postadoption Agreement CONN. GEN. STATS. §45a-715 (2003)	
(h)	<p>Either or both birth parents and an intended adoptive parent may enter into a cooperative postadoption agreement regarding communication or contact between either or both birth parents and the adopted child. Such an agreement may be entered into if: (1) The child is in the custody of the Department of Children and Families; (2) an order terminating parental rights has not yet been entered; and (3) either or both birth parents agree to a voluntary termination of parental rights, including an agreement in a case which began as an involuntary termination of parental rights. The postadoption agreement shall be applicable only to a birth parent who is a party to the agreement. Such agreement shall be in addition to those under common law. Counsel for the child and any guardian ad litem for the child may be heard on the proposed cooperative postadoption agreement. There shall be no presumption of communication or contact between the birth parents and an intended adoptive parent in the absence of a cooperative postadoption agreement.</p>
(i)	<p>If the Court of Probate determines that the child's best interests will be served by postadoption communication or contact with either or both birth parents, the court shall so order, stating the nature and frequency of the communication or contact. A court may grant postadoption communication or contact privileges if: (1) Each intended adoptive parent consents to the granting of communication or contact privileges; (2) the intended adoptive parent and either or both birth parents execute a cooperative agreement and file the agreement with the court; (3) consent to postadoption communication or contact is obtained from the child, if the child is at least twelve years of age; and (4) the cooperative postadoption agreement is approved by the court.</p>
(j)	<p>(j) A cooperative postadoption agreement shall contain the following: (1) An acknowledgment by either or both birth parents that the termination of parental rights and the adoption is irrevocable, even if the adoptive parents do not abide by the cooperative postadoption agreement; and (2) an acknowledgment by the adoptive parents that the agreement grants either or both birth parents the right to seek to enforce the cooperative postadoption agreement.</p>
(k)	<p>The terms of a cooperative postadoption agreement may include the following: (1) Provision for communication between the child and either or both birth parents; (2) provision for future contact between either or both birth parents and the child or an adoptive parent; and (3) maintenance of medical history of either or both birth parents who are a party to the agreement.</p>
(l)	<p>The order approving a cooperative postadoption agreement shall be made part of the final order terminating parental rights. The finality of the termination of parental rights and of the adoption shall not be affected by implementation of the provisions of the postadoption agreement, nor is the cooperative postadoption contingent upon the finalization of an adoption. Such an agreement shall not affect the ability of the adoptive parents and the child to change their residence within or outside this state.</p>
(m)	<p>A disagreement between the parties or litigation brought to enforce or modify the agreement shall not affect the validity of the termination of parental rights or the adoption and shall not serve as a basis for orders affecting the custody of the child. The court shall not act on a petition to change or enforce the agreement unless the petitioner had participated, or attempted to participate, in good faith in mediation or other appropriate dispute resolution proceedings to resolve the dispute and allocate any cost for such mediation or dispute resolution proceedings.</p>
(n)	<p>An adoptive parent, guardian ad litem for the child or the court on its own motion may, at any time, petition for review of communication or contact ordered pursuant to subsection (i) of this section, if the adoptive parent believes that the best interests of the child are being compromised. The court may order the communication or contact be terminated, or order such conditions in regard to communication or contact as the court deems to be in the best interest of the adopted child.</p>
<p>See also CONN. GEN. STATS. §17a-112(c) –(h) (2003)</p>	

Appendices

Appendix A	Child abuse prevention and punishment _____	166
	You asked for a description of changes in Connecticut law and agency practice over the past five years (1998 to 2002) to prevent and punish child abuse. _____	166
Appendix B	Mandated reporter law _____	170
	You asked for a (1) brief summary and copy of any instructions the Department of Children and Families (DCF) provides mandated reporters, (2) copy of a letter the chief state's attorney recently sent to mandated reporters, and (3) summary of Connecticut cases that discuss the interplay between the mandated reporter laws and laws on confidential communication. _____	170
Appendix C	Remedy for wrongful child abuse allegation _____	177
	You asked whether the General Assembly had enacted or considered legislation to provide a remedy for a person wrongfully accused of child abuse. _____	177
Appendix D	Subsidized guardianship and State child care subsidies _____	178
	You asked why the Department of Social Services (DSS) began to consider the income of state-subsidized guardians in determining eligibility for its child care subsidies. You also wanted to know how much DSS expected to save by this decision. _____	178
Appendix E	Guardians of persons with mental retardation _____	179
	You asked for information on the rights of a guardian of a person in a Department of Mental Retardation (DMR) group home, specifically in the case of an involuntary move from the group home. You also want to know if any state law prohibits a guardian from contributing money to pay for the rental of the home or for repairs to it. _____	179
Appendix F	Grandparents' custody of grandchildren _____	181
	You asked for an explanation of (1) Connecticut law on grandparents' custody of, and visitation with, their grandchildren and (2) <i>de facto</i> custody laws in other states. _____	181
Appendix G	Visitation for birth parent or blood relative after termination of parental rights _____	186
	You asked what the current law is concerning the rights of a birth mother or other close blood relative such as a grandparent to obtain visitation in conjunction with or after a termination of parental rights proceeding prior to an adoption. If they do not have such rights now, you asked how the rights could be granted and what kind of restrictions could be added to assure that such visitation was not granted in inappropriate cases. _____	186

Appendix A

October 18, 2002

2002-R-0836

OLR Research Report

Child Abuse Prevention and Punishment

By: Saul Spigel, Chief Analyst

You asked for a description of changes in Connecticut law and agency practice over the past five years (1998 to 2002) to prevent and punish child abuse.

Summary

Child abuse and neglect prevention takes two courses: preventing abuse or neglect from occurring in the first place (primary prevention) and, once it has occurred, preventing it from happening again (secondary prevention).

Healthy Families Connecticut, a newborn screening and home visiting program, is the state's principal primary prevention program. Begun as a pilot program in 1995 and expanded annually since 1998, it now serves about 5,000 children a year. Other primary prevention initiatives begun in the past five years include programs (1) the legislature created in 2000 and 2001 to help protect abandoned newborns and those born with substance abuse and severe medical conditions and (2) the Department of Children and Families (DCF) has begun to provide families at risk of abusing their children intensive, in-home counseling; parent support and education services; and individualized developmentally appropriate evaluation and treatment in day care settings.

A series of laws enacted since 1998 seek to prevent reoccurrences of abuse or neglect. One law makes the health and safety of an abused child in DCF custody the state's primary concern in planning for his or her future and making reunification decisions. Another seeks to avert cases of boyfriends abusing a single woman's children by requiring DCF caseworkers investigating an abuse complaint involving a single parent to tell the parent about available services and the consequences of failing to protect the child.

DCF began several new programs designed to prevent reoccurrences of abuse. Project SAFE screens abusive parents for substance abuse and offers them treatment. Safe homes provide a place where the agency can stabilize, assess, and plan for children just entering the foster care system and determine whether they can be safely returned home with appropriate services.

In its 2002 session, the legislature (1) increased penalties for most forms of sexual abuse involving minors, (2) extended the statute of limitations for damage suits against sex offenders, and (3) made sexual contact between coaches and instructors and minors a crime. It also added more people to the list of those who must report suspected abuse to DCF.

PREVENTING ABUSE

Primary Prevention

Healthy Families. Healthy Families Connecticut, administered by the Children's Trust Fund, is the state's principal child abuse primary prevention program. Trained staff at participating birthing hospitals screen all first-time mothers to assess their risk for child abuse and offer those at high risk up to five years of intensive home visiting services. They offer low-risk mothers parenting information, support, and community referrals. The program's Nurturing Program is an intensive 26-week group for parents directly aimed at preventing child abuse and neglect. The curriculum teaches families appropriate expectations, fosters empathetic understanding and strategies for enhancing the well being of children.

Healthy Families began as pilot project in 1995. The legislature established it in law in 1997 (PA 97-288) and has increased its budget incrementally since 1998, from \$1 to \$4 million today. It has grown from five to 19 sites during that period, which served approximately 5,000 families in FY 2001-02.

Safe Havens. A 2000 law sought to prevent the tragedy of an infant being left in a dumpster or on a doorstep by a fearful parent. PA 00-207 exempted from prosecution for abandonment or risk of injury to a minor any parent who leaves a newborn with designated hospital emergency room staff. The parent can leave the baby anonymously, although the staff will ask for a medical history. DCF takes custody of the baby, but if the parent changes her or his mind, a bracelet from the hospital will serve as identification in a court reunification process.

High-Risk Newborns. Because they can be extremely difficult to care for, DCF policy classifies infants born with drug involvement or other medical problems as at high risk and requires agency staff to work with the parents, hospital staff, and others in such cases. PA 01-149 required DCF to adopt regulations specifically to involve nurses and others who care for these infants on a daily basis in its planning for them.

Multi-Systemic Therapy. DCF began using multi-systemic therapy with its juvenile justice clients in 1999. This intense in-home family counseling program also works to strengthen the child and family's connection to schools, peers, civic organizations, and other community resources. The results were so positive that the agency is expanding the program to include other families who ask DCF for help with the difficulties they are experiencing.

Therapeutic Child Care. Families at risk for abuse or neglect can take advantage of DCF's 750 therapeutic child day care slots across the state. This program offers center-based services that may include individualized therapeutic and developmentally appropriate evaluation and treatment, parenting training and support, and outreach services.

Parent Education and Support. Working in homes and from schools and other locations, DCF provides parents with tools to more effectively raise their children through education and service coordination, including in-home services. It pays for parent aides who go into homes to provide education and support, role modeling, household management, referral, and service coordination. Its parent aides served 3,226 families in FY 2000-01.

DCF-funded parent education and support centers provide parenting education, support groups, social and recreational activities for parents with their children, drop-in activities, and parenting information. Parent education sessions can range from a one-session workshop to multi-session courses. DCF says these programs served about 2,400 families in FY 2000-01.

Preventing Reoccurrences (Secondary Prevention)

Health and Safety as Primary Concern. When DCF assumes custody of an abused child and places him or her in foster care, it must make reasonable efforts to reunite the family. PA 98-241 made protecting the health and safety of children placed in DCF custody the state's primary concern in planning for their future and making reunification decisions.

The act allows DCF to ask the court that ordered the child into its custody to determine whether reunification is appropriate. It defined circumstances under which the court could find reunification

inappropriate. These include the parent: (1) abandoning the child, (2) sexually molesting or exploiting the child, (3) severely abused the child physically, (4) assaulted the child or a sibling causing serious physical injury, or (5) deliberately killed one of the child's siblings.

Protecting Children from Abusive Boyfriends. In 1998, the legislature also responded to several cases of children being abused when their single mothers left them in the care of boyfriends. In order to prevent such situations, PA 98-173 required DCF caseworkers investigating a complaint to tell a single parent (and the noncustodial parent) in writing (1) when her child has been abused; (2) about available services (like child care, emergency shelters, and restraining orders); and (3) that DCF could take custody if she fails to protect the child.

Safe Homes. The 1999 General Assembly appropriated funds for DCF to start a "Safe Homes" program. This initiative provides a place where DCF can stabilize, assess, and plan for children just entering the foster care system in a safe, nurturing environment and determine whether they can be safely returned home with appropriate services. As of June 2002, DCF had established 16 safe homes throughout the state with a capacity of 184 beds. The homes served 1,004 children in FY 2001-02. DCF claims the program has been instrumental in reducing the total number of children in foster and relative care by 15% since 1999.

Substance Abuse Treatment for Abusers. Caregiver substance abuse is involved in nearly three-quarters of abuse and neglect cases. In 1995, DCF began a pilot program with the Department of Mental Health and Addiction Services to offer substance abuse evaluation and treatment to parents who are investigated for maltreatment.

In 2000, the legislature required the agencies to sign a memorandum of understanding formalizing the program. DCF says more than 18,000 adults have been evaluated and tested since 1995, and more than 5,000 have received treatment.

Intensive Family Preservation. DCF's family preservation program provides short-term, in-home help to strengthen families and reduce subsequent maltreatment. The program offers education, counseling, crisis intervention, and other services.

PUNISHING ABUSE

Multidisciplinary Investigation Teams

Teamwork in investigating reports of serious abuse or neglect could lead to better prosecution of abusers. In 1998, the legislature required DCF, prosecutors, and local police to work together with health and mental health professionals on selected cases and, when needed, a new special State Police unit (PA 98-241).

Internet Sex

Predators who knowingly use Internet chat rooms to lure a child under age 16 into prohibited sexual activity face a year in prison, a fine of up to \$2,000, or both in addition to any penalties for the underlying sexual offense. A second violation means up to five years in prison, a \$5,000 fine, or both and anyone convicted for a third time could face up to 10 years imprisonment, a \$10,000 fine, or both, again in addition to the penalties for the sex crime (PA 99-113).

Sexual Abuse Crimes

Revelations about sexual abuses by priests and athletic coaches led legislators in 2002 to enact new laws on sexual abuse crimes and the statute of limitations for prosecuting and suing abusers.

Increased Penalties and Statute of Limitations. PA 02-138 increases the penalties for a wide range of sex crimes involving minors under age 16, making some of them class A felonies punishable by 10

to 25 years imprisonment, up to a \$20,000 fine, or both with a five-year mandatory minimum sentence. It extends, in most cases, the statute of limitations for (1) prosecuting sexual abuse, sexual exploitation, or sexual assault of a minor from two to 30 years after the victim reaches age 18 or up to five years after he notifies authorities of the crime and (2) filing a personal injury lawsuit based on the crime from 17 to 30 years after he turns age 18. And, it eliminates the statute of limitations for suing for damages caused by sexual assault when the assailant is convicted of 1st degree sexual assault or aggravated sexual assault.

The act also prohibits courts from issuing an order or approving a settlement that prevents or restricts anyone from reporting to DCF or the police allegations of sexual abuse, exploitation, or assault of a minor.

Sexual Abuse by Coaches or Instructors. A new law (PA 02-106) makes it a crime for an athletic coach or a person, like a piano teacher, who provides intensive, ongoing instruction to engage in sexual intercourse or have sexual contact with (1) a student receiving coaching or instruction in a high school or (2) anyone under age 18 receiving such coaching or instruction. It makes sexual intercourse under these circumstances 2nd degree assault, which is punishable by one to 10 years in prison (with a nine-month mandatory minimum sentence), a fine of up to \$10,000, or both. It makes sexual contact under these circumstances 4th degree sexual assault, punishable by up to a year in prison, a fine of up to \$2,000, or both.

Mandated Reporters. The legislature increased the range of people who, because of their occupations, must report to DCF or the police when they believe a child has been abused or neglected. In 2002, it added to the list of “mandated reporters” juvenile and adult probation and parole officers, intramural and interscholastic coaches, emergency medical service providers, licensed professional counselors, certified alcohol drug abuse counselors, DCF employees, paid child care providers in group day care homes, and Department of Public Health employees who license day care facilities and youth camps (PA 02-138 and 106).

PA 02-138 also reduces, from 24 to 12 hours, (1) the maximum time that mandated reporters have to orally report suspected cases of abuse or neglect to DCF or the police and (2) the time DCF has after receiving a report of sexual or serious abuse to notify the police and prosecutors. It also broadens the circumstances under which reports must be made to include cases where the reporter has reasonable cause to suspect or believe a child has been placed in imminent risk of serious harm by anyone, not just those responsible for the child’s health, welfare, or care.

SS:ts

Appendix B

OLR Research Report

June 6, 2002

2002-R-0528

Mandated Reporter Law

By: Sandra Norman-Eady, Chief Attorney
Susan Price-Livingston, Associate Attorney

You asked for a (1) brief summary and copy of any instructions the Department of Children and Families (DCF) provides mandated reporters, (2) copy of a letter the chief state's attorney recently sent to mandated reporters, and (3) summary of Connecticut cases that discuss the interplay between the mandated reporter laws and laws on confidential communication.

SUMMARY

By law, 29 named professionals (this number increases to 38 on July 1, 2002, the effective date of PA 02-138) and paid childcare providers working in licensed facilities are required to report suspected abuse, neglect, and at-risk situations to DCF. DCF offers training sessions to these mandated reporters on such matters as recognizing abuse and neglect, what must be reported, how to report it, anonymity, and immunity and penalties. The agency attempts to tailor the training sessions and handouts to the specific needs of the mandated professionals. Last year the 200+ employees who serve as trainers trained over 9,000 mandated reporters.

Chief State's Attorney John Bailey and DCF Commissioner Kristine Ragaglia co-signed a letter on April 11, 2002 reminding members of the clergy of their duty to report suspected child abuse and neglect, providing them with DCF's child abuse hotline number, and offering them free mandated reporter training through DCF's Training Academy. We have attached a copy of the letter for your information.

We have not found any Connecticut cases that specify the controlling statutes when a conflict arises between the mandated reporter laws and laws on confidential communications. The reason for this is probably because the professionals whose communications are confidential have not reported abuse. However if such a case is filed, courts must apply the rules of statutory construction and attempt to harmoniously construe the conflicting statutes. Where this is not possible, the more specific statute controls (*McKinley v. Musshorn*, 185 Conn. 616). Between the mandated reporter statute and the statute specifying privileged communications with members of the clergy, the former appears to be more specific. This is less apparent in other instances where this conflict may arise.

Nine of the professionals required to report child abuse or neglect have laws protecting all or certain communications from disclosure. Of these nine, five (psychologists, physicians, marital and family therapists, social workers, and professional counselors) have laws exempting from the privilege communications regarding child abuse or communications that some other law mandates they report. The law regarding three of the remaining four (clergy and battered women's or sexual assault counselors) does not exempt these communications even though the privileged communication could include discussions of child abuse. The ninth mandated professionals whose communications are privileged are schoolteachers,

administrators, and counselors. However, their privilege is so limited that discussions of child abuse probably are not covered; thus, they are obligated under the mandated reporter statute to report suspected child abuse.

DCF'S MANDATED REPORTER TRAINING AND INSTRUCTIONS

DCF offers training to all mandated reporters who ask for it. The professionals required to make the reports choose the date and time they are available for training. DCF trainers then attempt to put together a training package that meets the professionals' needs.

In addition to providing them with summaries of the law on what must be reported, how to report it, anonymity, immunity, and penalties, DCF trains them to recognize child abuse and neglect. DCF has prepared a chart of the key physical and behavioral indicators of neglect (e.g., a child is constantly hungry or begs for food) and physical (e.g., a child has unexplained injuries), sexual (e.g., a caretaker is extremely protective or jealous of a child), and emotional (e.g., a caretaker treats siblings unequally) abuse (see attached).

DCF also provides trainees with a copy of the child abuse and neglect reporting form and instructions on completing it (DCF-136). This form asks for the child's name, age, sex, address, and guardian's name and address. It also asks for:

the perpetrator's name, address, and relationship to the child;

the date, time, nature, and extent of the abuse or neglect;

information on previous injuries to the child or his siblings;

the names and ages of any known sibling;

a description of how the reporter learned of the injuries or neglect;

a description of any action taken to assist the child;

the date of the oral report and the name of the hotline worker who received it; and

the reporter's name, agency, position, address, telephone number, and signature.

According to Josh Howroyd, DCF's legislative program manager, DCF is in the process of revising mandated reporter training materials. We will send you this updated material after we receive it. In the meantime, we have attached the training materials that we think might be helpful to you.

Mandated Reporters

The following individuals must report allegations of child abuse and neglect:

licensed physicians and surgeons and unlicensed medical residents;

registered and licensed practical nurses;

medical examiners;

dentists and dental hygienists;

psychologists, social workers, and licensed marital and family therapists;

school teachers, principals, guidance counselors, and paraprofessionals;

the child advocate;

police officers;

members of the clergy;

pharmacists and physical therapists;

licensed osteopaths, chiropractors, podiatrists, and physician's assistants;

licensed substance abuse counselors;

sexual assault and battered women's counselors; and

child care providers working in licensed facilities (CGS § 17a-101).

Beginning July 1, 2002 (the date PA 02-138 becomes effective), the list of mandated child abuse reporters will also include: juvenile or adult probation officers; juvenile or adult parole officers; school coaches; licensed or certified emergency medical services providers; licensed professional counselors; certified substance alcohol and drug abuse counselors; child care providers in licensed group day care homes; DCF employees; and Department of Public Health employees who are responsible for licensing child day care centers, group and family day care homes, and youth camps.

PRIVILEGED COMMUNICATIONS

We were unable to find any cases that identified the controlling statute when there is a conflict between the mandated reporter and privileged communication statutes. Two attorneys who are involved in criminal and civil child sexual assault cases against local priests confirmed our results. Neither Judith Rossi, chief state's attorney's office, nor Jason Tremont, a Bridgeport attorney, were aware of any court decision that answers this question.

This type of conflict is possible with only three of the professionals required to report suspected child abuse (clergy and battered women's or sexual assault counselors). Where the conflict has arisen, Rossi and Tremont believe the professionals have probably opted not to report. Where Catholic priests are involved, an avalanche of recent cases has just begun to uncover the magnitude of alleged child sexual assault that went unreported. Table 1 shows mandated reporters whose communications are totally or partially privileged and any applicable exemptions.

TABLE 1: PRIVILEGED COMMUNICATION

<i>Privilege Holder</i>	<i>TYPE OF COMMUNICATION</i>	<i>When Statute Permits Unconsented Disclosure</i>
Clergymen (CGS § 52-146b)	Confidential communications made to clergy in their professional capacity; applies to any civil or criminal case or proceedings preliminary thereto, or in any legislative or administrative proceeding	None in statute
Psychologists (CGS § 52-146c)	All oral and written communications and records relating to the diagnosis and treatment of a person between such person and the psychologist or between the psychologist and the patient's family members: applies in	1. When made in court-ordered examination, if person has been told communications are not confidential and person's mental state is at issue; 2. In civil proceeding, where person

<i>Privilege Holder</i>	<i>TYPE OF COMMUNICATION</i>	<i>When Statute Permits Unconsented Disclosure</i>
	same settings as above	<p>introduces his psychological condition as an element of the case, or after death, when someone brings a case on his behalf (A court must find interests of justice more important than protecting the relationship between the person and psychologist);</p> <p>3. When psychologist believes that there is risk of imminent personal injury to the person or to other people or their property;</p> <p>4. When psychologist has good faith suspicion of child abuse or abuse of an elderly, disabled, or incompetent person;</p> <p>5. In collection matters (limited disclosure); or</p> <p>6. To a homicide victim's immediate family, when (a) patient has been found not guilty by reason of insanity after July 1, 1989, (b) they ask for this information within six years, and (c) used in civil suit about the death</p>
Physicians (CGS § 52-146o)	Communications made by, or information obtained from a patient or his conservator or guardian about any actual or supposed physical or mental disease or disorder or information obtained by examining the patient	<p>1. Pursuant to any statute or regulation or court rule;</p> <p>2. To an attorney or malpractice insurer when a legal claim is pending or may be filed and the information is used in the doctor's defense;</p> <p>3. To DPH when it is investigating a complaint against the doctor; or</p> <p>4. When the doctor has a good faith suspicion of child abuse or abuse of an elderly, disabled, retarded, or incompetent person</p>
Psychiatrists (CGS § 52-146d; also covered by CGS § 52-146o, above)	All oral and written communications and records relating to diagnosis or treatment of a patient's mental condition between the psychiatrist and patient, psychiatrist and patient's family, or between them and a person participating under the supervision of a psychiatrist in accomplishing the objectives of diagnosis and treatment, including a mental health facility's	<p>1. To other people treating or diagnosing the patient when the doctor deems it necessary and tells the patient;</p> <p>2. When the doctor determines there is substantial risk of imminent physical injury to the patient or others or needs to disclose to hospitalize or commit the patient;</p>

<i>Privilege Holder</i>	<i>TYPE OF COMMUNICATION</i>	<i>When Statute Permits Unconsented Disclosure</i>
	records	<p>3. In collection matters (limited information);</p> <p>4. When examination has been ordered by a court or in connection with a conservatorship application and (a) the patient is a party or his mental competence is at issue, (b) he has been informed that disclosure may occur, and (c) disclosure is limited to issues involving his mental condition;</p> <p>5. In lawsuits when the patient introduces his mental condition as an element of the case and the court finds it more important to the interests of justice that the communications be disclosed than that the relationship be protected;</p> <p>6. To the public health or mental health and addiction services commissioner in connection with facility inspections, investigation or examinations authorized by law;</p> <p>7. To immediate family members or legal representatives of homicide victims, under same circumstances as psychologists;</p> <p>8. To the Department of Mental Health and Addiction Services (DMHAS) in connection with a behavioral health service contractor's payment claim (limited information) or services provided to DMHAS clients; or</p> <p>9. To researchers in some circumstances</p>
Marital and family therapists (CGS § 52-146p)	Oral and written communications and records relating to the diagnosis and treatment of a person between the person or a family member and the therapist	<p>1. Where mandated by any other provision of the general statutes,</p> <p>2. Where therapist has good faith belief that failure to disclose presents a clear and present danger to a person's health or safety, or</p> <p>3. In collection matters (limited information and prior notice to client required)</p>
Social workers (CGS § 52-146q)	Oral and written communications and records relating to the evaluation and	<p>1. To other treaters;</p>

<i>Privilege Holder</i>	<i>TYPE OF COMMUNICATION</i>	<i>When Statute Permits Unconsented Disclosure</i>
	treatment of a person between the person or a family member and a social worker or someone acting under the social worker's supervision	<p>2. When there is a substantial risk of imminent physical injury to the person or someone else, or when disclosure is otherwise mandated by statute;</p> <p>3. In court-ordered evaluations, when court finds need for justice outweighs protecting confidentiality;</p> <p>4. In lawsuits when the client introduces his mental condition as an element of his claim or defense; and</p> <p>5. In collection matters (limited information)</p>
Professional counselors (CGS § 52-146e)	Oral and written communications and records relating to diagnosis and treatment between the person or family members and a counselor	<p>1. In court-ordered mental health assessments, when judge finds that the person has been told that communications are not confidential, and only on issue of the person's mental condition;</p> <p>2. In lawsuits, where the person has introduced his mental condition as an element of his claim or defense;</p> <p>3. Where mandated by other statutes;</p> <p>4. Where counselor has good faith belief that failure to disclose presents a clear and present danger to a person's health or safety or there is risk of imminent personal injury to a person or property;</p> <p>5. Where counselor has good faith suspicion of child abuse or abuse of an elderly, disabled; and incompetent person; or</p> <p>6. In collection matters (limited information)</p>
Battered women's or sexual assault counselors (CGS § 52-146k)	Information transmitted between a victim and counselor in the course of that relationship and in confidence, by a means which, so far as the victim is aware, does not disclose the information to a third person other than anyone who is present to further the interests of the victim in the consultation or any person to whom disclosure is reasonably necessary for the transmission of the information or	<p>Communications made after 10/1/83 cannot be disclosed in civil, criminal, administrative, or legislative proceedings. But the privilege does not apply:</p> <p>1. when proving chain of custody of evidence or the physical appearance of the victim at the time of the injury or</p> <p>2. when the counselor knows that the</p>

<i>Privilege Holder</i>	<i>TYPE OF COMMUNICATION</i>	<i>When Statute Permits Unconsented Disclosure</i>
	for the accomplishment of the purposes for which the counselor is consulted; includes all information received by, and any advice, report, or working paper given or made by the counselor in the course of the relationship with the victim	victim has given perjured testimony and the defendant or the state has made an offer of proof that perjury may have been committed
Elementary and high school teachers, administrators, and nurses (CGS § 10-154a)	Communications made privately and in confidence by a student, when information concerns the student's alcohol or drug abuse or any alcoholic or drug problem	Must turn over physical evidence obtained from a student indicating that a crime has been committed to school administrator or law enforcement within two days in most cases; not required to disclose student's name

SN-E/SP-L/eh

Appendix C

OLR Research Report

November 26, 2002

2002-R-0948

Remedy for Wrongful Child Abuse Allegation

By: Saul Spigel, Chief Analyst

State law provides a limited remedy for a person wrongfully accused of child abuse or neglect or who has been the subject of a Department of Children and Families (DCF) investigation. It allows a person (or his attorney or other representative) to obtain DCF records about him and, under certain circumstances, the name of the person who made the allegations and any recording of an oral report. To obtain information about the reporter, a Superior Court judge must determine, after an *in camera* (private) record review and a hearing, that there is reasonable cause to believe the reporter knowingly made a false report or that other interests of justice require releasing those records. After the alleged perpetrator reviews the records he obtains and determines they contain factually inaccurate entries or materials, the law allows him to add a statement to the record giving his view of the facts. His statement becomes a permanent part of the record (CGS § 17a-28(m)).

Knowingly making a false report of child abuse or neglect is a criminal offense. The penalty is a \$2,000 fine, up to a year in prison, or both (CGS § 17a-101e). The law requires DCF to tell people who phone in abuse reports (1) that their call is being recorded and (2) the penalties for knowingly making a false report. The law also requires DCF to disclose to the alleged perpetrator and appropriate law enforcement agencies the name of anyone it suspects or knows made a false report (CGS § 17a-103 (a) and (b)).

When DCF receives a report of abuse or neglect, it places the name of the alleged perpetrator in its child abuse registry. Agency regulations require removing a person's name from the registry when DCF determines a report is unfounded or it finds that, while the child is at risk, abuse or neglect has not occurred (*Conn. Agency Regs.*, § 17a-101-4). In this situation, DCF policy calls for removing the names from publicly available registry sites, but keeping them for 12 months in a sub-file available to DCF staff, in case other reports are made about the person.

The above provisions (with the exception of the penalties for knowingly make a false report and removing names from the abuse registry) were enacted in PA 97-319. The same year, the legislature considered two other bills related to false reports, and in 1998 it considered another one.

- HB 6325 (1997) required DCF to tell individuals when an abuse or neglect allegation against them had been substantiated and allowed them to appeal the substantiation to the child advocate. The Children's Committee favorably reported the bill to the Judiciary Committee, which took no further action.
- SB 819 (1997) required removing the names of people who were placed in DCF's child abuse registry when DCF determined the allegation was unsubstantiated. The Children's Committee raised this bill after a public hearing but took no further action.
- SB 340 (1998) made the same change as SB 819. The Children's Committee referred it the Human Service Committee, which referred it to the Judiciary Committee. The latter committee took no further action.

Appendix D

OLR Research Report

April 14, 2003

2003-R-0354

Subsidized Guardianship and State Child Care Subsidies

By: Saul Spigel, Chief Analyst

You asked why the Department of Social Services (DSS) began to consider the income of state-subsidized guardians in determining eligibility for its child care subsidies. You also wanted to know how much DSS expected to save by this decision.

New regulations for governing the way DSS counted the income of state-subsidized guardians in determining their eligibility for child care subsidies reflected a decision to treat all families equitably, according to DSS staff. Under the old rules, a single parent with one child would not be eligible for a subsidy if her yearly income was \$ 40,010 (75% of the state median income) while a subsidized guardian of one child would be eligible regardless of her income. The new regulations took effect January 1, 2002 and were implemented as DSS redetermined families' eligibility.

The Department of Children and Families (DCF) subsidizes relatives who become the legal guardians of children who have been in DCF foster care for at least 18 months. Their subsidy is the same as foster parents receive. The old child care certificate rules treated children who received guardianship subsidies just like foster children. That is, the guardian's income, like the foster parent's, was not considered in determining eligibility for child care subsidies.

But legal guardianship is a different legal status than foster parent. A guardian has full legal control over and responsibility for a child while DCF has full legal control and responsibility for a foster child, who is a ward of the state. DSS' new regulations include legal guardians in their definition of parent (they also include relative caregivers under the state's cash assistance program and anyone else who stands in loco parentis to the child). As a member of the family in which the child lives, their income is counted. DSS has no definitive data on savings it might have obtained from making this change, which it did not view as a cost-saving measure, according to David Dearborn, a staff member in the government relations office.

SS: eh

Appendix E

OLR Research Report

August 28, 2002

2000-R-0747

Guardians Of Persons With Mental Retardation

By: John Kasprak, Senior Attorney

SUMMARY

You asked for information on the rights of a guardian of a person in a Department of Mental Retardation (DMR) group home, specifically in the case of an involuntary move from the group home. You also want to know if any state law prohibits a guardian from contributing money to pay for the rental of the home or for repairs to it.

RIGHTS AND DUTIES OF A GUARDIAN

Generally

State law specifies that a guardian of a mentally retarded person, and to the extent possible the person, is the primary decision maker concerning the person's program needs and other policies and practices affecting his well being, within the limits of the authority granted by the probate court (see PA 01-140; CGS § 45a-677(i)). The plenary or limited guardian must consult with the person and appropriate family members, where possible, when making decisions.

Transfer of Individuals

The law allows DMR to transfer persons with mental retardation from one institution or facility to another when necessary and desirable for the person's welfare. ("Institution" includes both public and state-supported private institutions). The person and his parent, guardian, conservator, or other legal representative must get written notice of their right to object to the transfer at least 10 days before the proposed transfer, except for emergency transfers. If an objection is made, DMR must hold a hearing. No hearing is required if DMR withdraws the proposed transfer (PA 01-140; CGS. § 17a-210). In the case of an emergency transfer, the law requires that notice be given within 10 days after the transfer. The notice must advise the recipient of his right to a hearing (see CGS. § 17a-210). By law, in any transfer hearing, the proponent of a transfer has the burden of showing, by clear and convincing evidence, that the proposed transfer is in the best interest of the resident (§ 17a-210).

COMMUNITY-BASED HOUSING SUBSIDY PROGRAM

The situation presented by your question may involve DMR's "Community-Based Housing Subsidy Program" for eligible DMR clients. Under this program, a client authorized for DMR-residential services may be eligible for a housing subsidy if the DMR regional director determines the client's residential needs can be adequately met by placement in a subsidized community-based residence. A client whose income and assets are sufficient to pay for his total housing costs is not eligible for the subsidy (see DMR Regs. , § 17a-218-1 to 17a-218-7).

If placement in a subsidized community residence requires a lease, the regional director must determine the client's capacity to execute a lease. If the regional director finds that the client lacks the

capacity, or a guardian or conservator has been appointed, the guardian or conservator or another party not employed by the state must make arrangements for the lease's execution, (§ 17a-218-5).

Subsidy payments are made monthly to the client or his representative to cover housing costs for the following month. At least quarterly, the client's income must be reevaluated by the regional director to determine any changes in income available for housing costs. The subsidy payment may be adjusted to reflect the income changes and may be terminated if other income sources are determined sufficient to pay for the client's total housing costs (§ 17a-218-6).

According to DMR, if the DMR region is concerned about the residence and there are issues with the rental property (e. g. an increase in rent), the region may seek to relocate the client. The regulations specify, "all statutes and regulations pertaining to transfers of clients shall be adhered to for clients placed, or to be placed, in subsidized community residences" (§ 17a-218-7). Presumably, the hearing process discussed above for transfer of clients (CGS § 17a-210) would apply.

The regulations also provide that if it becomes necessary for a client to cease occupying a subsidized residence, DMR will assist with (1) the lease termination, (2) substitution of other clients to participate in the program, and (3) other negotiations with the landlord needed to relieve the client of any legal liability resulting from ceasing the occupancy (§ 17a-218-7).

CONTRIBUTION OF MONEY BY A GUARDIAN

By law, guardianship does not require any financial responsibility on the part of the guardian. But state law does not prohibit a guardian from spending his money to assist the individual with mental retardation.

But it appears that a money contribution by a guardian towards a client's residential costs under the housing subsidy program could affect his continued eligibility.

GUARDIANSHIP STUDY

PA 01-140 requires the DMR commissioner to study the law on guardianship of persons with mental retardation. He must collaborate with (1) the probate court administrator and the director of the Office of Protection and Advocacy for Persons with Disabilities or their designees and (2) one representative each from the association for Retarded Citizens of Connecticut and the Friends of Retarded Citizens of Connecticut. He must submit his findings and recommendations the Public Health Committee by January 1, 2003.

JK: ts

Appendix F

OLR Research Report

September 22, 2003

2003-R-0596

Grandparents' Custody Of Grandchildren

By: Saul Spiegel, Chief Analyst

You asked for an explanation of (1) Connecticut law on grandparents' custody of, and visitation with, their grandchildren and (2) "*de facto*" custody laws in other states.

SUMMARY

Grandparents in Connecticut can become the custodian of a grandchild in four ways.

1. They can adopt a grandchild after a court terminates both parents' rights to the child.
2. They can ask the probate court to appoint them as the child's guardian.
3. They can be awarded custody by the Superior Court when the child's parents divorce.
4. They can informally assume custody.

The first three methods provide the grandparents with legal rights in relation to the child and some protection against a parent's attempt to regain custody. The latter method provides no rights or protection. Three states-Indiana, Kentucky, and Minnesota-allow grandparents (and others) to seek legal custody of a child by showing that they have been the child's *de facto* custodians. Such a showing requires them to prove that they have been the child's primary caretakers for some period of time in the parents' absence. If they show this, the laws require the court to treat them the same as the parents in making custody decisions. Michigan and South Carolina considered, but did not enact, similar law this year.

CONNECTICUT LAW

Adoption

Adoption creates a legal relationship of parent and child between people who are not parent and child by birth. Through court action, the adoptive parents gain the same legal duties toward the adopted child as they would toward a birth child. These are the obligation to care for and control the child and make major decisions affecting his or her education and welfare (CGS § 45a-604). Adoption usually involves the complete and final termination of the birth parents' rights.

Any legally competent person age 18 or over may become an adoptive parent by filing an application with the probate court. The court asks the Department of Children and Families (DCF) or a DCF-licensed agency to investigate to find out if he or she will be a fit parent. At a hearing, the court must consider the investigative findings and determine that the adoption is in the child's best interest.

Guardianship

Removal of Parent as Guardian. Parents are the legal guardians of their children, which gives them the duty to care for and manage the children's affairs. But the probate court can remove a parent as guardian and give guardianship to a grandparent or other party.

The process begins when the party seeking guardianship files a motion in the probate court (or the court can initiate the change on its own). The court orders an investigation, unless it determines one is not needed. DCF or a DCF-licensed agency conducts the investigation.

After the investigation the court holds a hearing to determine whether to (1) remove the parent as guardian and (2) appoint the applicant as guardian. In determining the first, it must find by clear and convincing evidence (the highest level of proof in a civil matter) that the parent:

1. consents to removal as guardian;
2. has abandoned the child, that is shows no reasonable degree of interest in, or concern or responsibility for, the child;
3. has failed to provide care, guidance, or necessary control over the child's physical, educational, emotional, or moral well-being; or
4. has physically abused the child or given access to the child to another person who abused him.

When deciding whether to appoint the applicant as guardian, the court considers:

1. the applicant's ability to meet on a daily basis the child's physical, educational, emotional, and moral needs;
2. the child's wishes concerning a guardian, if he is sufficiently mature and able to form a preference;
3. the existence of any established relationship between the child and the applicant; and
4. the child's best interest.

A parent still has some rights even if he is removed as a child's guardian. The court may permit the parent to visit the child. And a parent who has been removed may apply to the court that removed him for reinstatement as guardian if he believes the factors that resulted in his removal have been resolved satisfactorily. The court must first hold a hearing to determine whether to reinstate him (CGS §§ 45a-609 to -621).

Other Forms of Guardianship. A sole parent or the Department of Children and Families can ask the probate court to appoint another adult as a child's coguardian. In considering this request, the court applies the same criteria as it does for a contested guardianship case (see above). If it agrees to the coguardianship, the court can make it effective immediately or when a specific event, such as the parent's mental incapacity, physical debilitation, or death, occurs. If the coguardianship is contingent on an event, the coguardian must submit a written affidavit that it has occurred before the guardianship becomes effective (CGS § 45a-616).

Instead of going through the probate court, a child's parents can also designate someone to assume guardianship if a specific event like those mentioned above occurs. The designation must be made in writing and witnessed by two people. In order for the guardianship to become effective, the "standby" guardian must produce a written, witnessed document signed under penalty for false statement that the contingent event has occurred (CGS §§ 45a-624 to -624g).

A parent can ask the probate court to appoint someone as temporary guardian for up to one year. The parent can do this if he or she is unable to care for a child for any reason, including illness and absence from home. The guardianship ends when the parent notifies the court and the temporary guardian (CGS § 45a-622).

Custody

A grandparent or a related or unrelated third party can ask the Superior Court to give them legal custody over a child. This is most often sought when a child's parents are divorcing. Legal custody is like guardianship in that it is a court order giving the grandparent the right to care for and make decisions regarding the child's welfare. And, like guardianship it is not permanent; the court can modify its order at anytime, transferring custody back to a parent or to another adult.

To obtain legal custody, a person must file suit in Superior Court. If both parents consent to the custody change, the court is likely to grant it; if they do not, according to Sandra Lax, a family law attorney in Bridgeport, the applicant must prove (1) that being with his or her parents will harm the child's growth or development or (2) that the parents are unfit to care for their child. The court's decision is guided by the child's best interest.

Parents do not lose their rights when custody is transferred to a third party. The court may require them to pay child support and may give them visitation rights. And a parent can subsequently ask the court to modify its custody order and return the child to him or her (CGS § 46b-57).

Informal Custody

Connecticut has no laws governing informal custody arrangements between parents and grandparents. Written informal agreements are not legally enforceable and do not give grandparents any legal right to custody. They might give grandparents who are caring for their grandchildren the documentation they need to make decisions for the child, for example enrolling him in a school or obtaining medical records. They can also show that a parent has not abandoned the child, which may help if the parent wants to reclaim custody.

Visitation

The U. S. and Connecticut Supreme courts have ruled that grandparents have no right to visit with their grandchildren if the parents do not want them to (see OLR reports 97-R-0020 and [2000-R-0644](#), enclosed). A Connecticut grandparent (or any other third party) can ask the Superior Court to grant a visitation order. The court can do so if it determines visitation is in the child's best interest. If the child is old enough, the court will consider his or her wishes. A visitation order does not give a grandparent any parental or guardianship rights to the child, nor does it create any financial obligation on him (CGS § 46b-59).

DE FACTO CUSTODY LAWS

Indiana (Indiana Code, 31-14-13-2 to 10)

Indiana, in 1996, was the first state to give grandparents another option to seek custody of their grandchildren: status as a *de facto* custodian. The law requires the court to make a person a party to a custody proceeding if it finds by clear and convincing evidence that he is the child's *de facto* custodian. But it does not define that term. It makes evidence that the child has been cared for by a *de facto* custodian one of eight factors the court must consider in determining a child's best interest. And, in making its custody decision the law also requires the court to consider the custodian's wishes; the extent to which he has cared for, nurtured, and supported the child; and the parents' intent and circumstances in placing the child with him. The law requires the court to award custody to a *de facto* custodian if it determines this is in the child's best interest.

Kentucky (KRS Ann. , § 403. 270)

In 1998, the Kentucky General Assembly adopted its version of "*de facto*" custodian. This law defines the term and requires a court that determines a person is a *de facto* custodian to give him or her equal standing in court with a child's parents in cases involving custody of the child.

To qualify as a *de facto* custodian, a person (who could be a person other than a grandparent) must show by clear and convincing evidence that the child has lived with him and he has been child's primary caretaker and source of financial support for:

1. six months or more, if the child is under three years old; or
2. a year or more, if the child is three years old or above or has been placed with the caretaker by the state child protective services agency.

The time a child spends with a grandparent after a parent begins a proceeding to regain custody does not count in determining the required minimum residence and caretaking period.

In deciding whether to give custody to a parent or a *de facto* custodian the court must be guided by the child's best interest and must consider such factors as:

1. the wishes of the parents, child, and the *de facto* custodian;
2. the extent to which the de facto custodian has cared for, nurtured, and supported the child;
3. the parents' intent and the circumstances under which the child was placed with the *de facto* custodian, including whether domestic violence was a factor and whether the child was placed to allow the parent to seek work or attend school; and
4. the physical and mental health of all individuals involved.

In addition to awarding custody to one or the other party, the court can award joint custody to the parents and the *de facto* custodian.

In February 2003, the Kentucky Court of Appeals upheld this law in the face of a challenge by a parent who argued that it infringed on the "fundamental right of a natural parent" to determine the care, custody, and control of his child. In a two-to-one ruling, the majority noted that the law requires a court to determine "that the natural parent has abdicated his or her role as primary caregiver for a substantial period of time" (*Rogers v. Blair*, No. 2001-CA-001835-MR, as reported in the Louisville *Courier-Journal*, February 8, 2003).

Minnesota (Minn. Stat. 257C. 01 to . 07)

Minnesota adopted its de facto custodian law in 2002. It is similar to Kentucky's in some respects but differs significantly in others. The principal differences follow.

1. In making custody decisions, Minnesota courts do not have to give equal standing to parents and de facto custodians; instead, they must not give a parent preference over a *de facto* custodian.
2. In addition to showing that he has been the child's primary caregiver for six months or a year (depending on the child's age), the *de facto* custodian applicant must show by clear and convincing evidence that the child's parents have neglected to provide food, shelter, clothing, health care, education, nurturing, and other care necessary for the child's development. The law sets specific criteria the court must consider in making this determination, including the parents' intent in placing the child with the de facto custodian and the amount of involvement they had with the child during their absence and whether a sibling is already in the *de facto* custodian's care.
3. Once he proves that he qualifies as a de facto custodian, the grandparent (or other party seeking custody) must show by a preponderance of evidence that placing the child in his custody is in the child's best interest.

4. If either the parent or potential de facto custodian is receiving public assistance on behalf of the child or public child support enforcement services, notice of the application for custody must be given to the assisting agency.

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Appendix G

OLR RESEARCH REPORT

February 4, 1998

98-R-0031

TO:

FROM: Lawrence K. Furbish, Assistant Director

Visitation for Birth Parent or Blood Relative After Termination of Parental Rights and Adoption

You asked what the current law is concerning the rights of a birth mother or other close blood relative such as a grandparent to obtain visitation in conjunction with or after a termination of parental rights proceeding prior to an adoption. If they do not have such rights now, you asked how the rights could be granted and what kind of restrictions could be added to assure that such visitation was not granted in inappropriate cases.

Birth mothers and other close blood relatives have no specific or explicit statutory or common law right to visitation in adoption situations now. But CGS § 46b-59 allows any third party to seek visitation in Superior Court and the court may grant it if it finds the visitation to be in the child's best interest.

In *Michaud v. Wawruck*, (209 Conn. 407 (1988)) the Supreme Court ruled that an agreement between a birth mother and the adoptive parents to allow the mother visitation is not against public policy and can be enforced provided the court finds the visitation to be in the child's best interest. The ruling in this case is very narrow in its application, and it is not clear how the Court would rule on a visitation request when there was no prior agreement between the parties.

According to Linda Dow, chief counsel to the Probate Court Administrator, in practice birth mothers, grandparents, and other blood relatives do not seek such visitation. She said her office monitors adoptions very closely and although she could not guarantee that no such case exists, she is not aware of any.

The probate court can grant visitation to anyone, including a parent, who is removed as guardian of any minor (CGS § 45a-612). The court must be guided by the child's best interest and must take the child's wishes into account, if the child is old enough and capable of forming an intelligent opinion. The probate court has no similar statutory authority concerning terminations of parental rights or adoptions, and, as you know, because it is not an equity court like Superior Court, it would need statutory authority to be able to do so.

Should you wish to amend the law to allow birth parents and other birth relatives to seek such visitation in probate court it could be done in several ways. The termination of parental rights statute (CGS § 45a-717) could be amended to allow certain parties to seek visitation when an adoption will follow the termination. Alternatively, a new section could be written for the adoption situation similar to the existing statute covering parents removed as guardians. In either case, CGS § 45a-731, which is the statute laying out the legal effects of a final decree of adoption, may need to be amended to reflect the new possibility of visitation.

There are a few policy questions to be considered. To be consistent with other statutes and the often stated public policy of the state, the bill should make any decision on visitation meet the child 's-best-interest test. You would also need to consider how large the pool of people who could seek visitation should be: birth mothers, fathers, grandparents, or other blood relatives and how far removed. Another issue would be time frame. Should parties be allowed to seek visitation only until the termination is finalized, until the adoption is finalized, or until a specified period after the adoption such as six months or a year. If no limit is included, parties might seek visitation several years after the adoption, a situation that might not be good for the adoptive parents or the child.

LKF: pa

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Yontef v. Yontef, 185 Conn. 275, 281, 440 A.2d 899 (1981), §§ 1.1 and 6

INDEX

Abandonment, § 4.3a
 Abused (definition), § 1.0
 Acts of parental commission or omission, § 4.3b
 Ad litem, § 3.2e
 Adult memories, child abuse § 2.8
 Age
 AIDS, table 2
 Alcoholism of parent, table 1
 ALR Annotations (TPR), Table 17
 Appeals (TPR), § 4.4I
 Appointment of guardians, § 3.5
 Assault, § 4.3f
 Assault, TPR, § 4.3f
 Behavior of parent, table 1
 Best interest of the Child (TPR), Table 15
Beyond the Best Interest of the Child, § 1.3
 Chief States Attorney, § 2.2
 Child Abuse and Neglect Registry, § 2.6
 Child Abuse Prevention and Treatment Act, § 2.5
 Child Advocate, §§ 2.1 and 2.5
 Child Welfare Library, web address, § 2.0
 Child, definition, § 4.4c
 Child's Trust Fund, § 2.5
 Children's Defense Fund, web address, § 2.0
 Child's attorney, table 1
 Cocaine (TPR), § 4.3c
 Coguardian, § 3.2a.4
 Commissioner of Children and Families, §§ 2.1
 Commitment of child, Table 7
 Consent to TPR, § 4.2
 Counsel, right to (TPR), § 4.1b
 Court appointed guardians, § 3.2a.4
 Credibility, table 1
 custody (temporary), § 2.2
 Custody, temporary, §§ 2.2 and 3
 Day-to-date devotion, table 1
 definition, §§ 2.0, 4.4c
 Denial of child visitation rights, table 4-5
 Designated guardian, § 3.2c
 Disability of parent, table 2
 Disobedience of court order, table 1
 Drug use by parent, table 2
 Due process, § 4.1a
 Duties of a guardian, § 3.4
 Duty to report, § 2.1
 Educational problems of child, table 1
 Emergency, life threatening medical situations, § 2.3
 Emotional problems of parent, table 1
 Emotional ties, table 1
 Equal protection of the laws (TPR), § 4.1d
 Equal Protection of the Laws, § 4.1a
 Estate of a minor (guardian), § 3.2b
 Expert testimony, § 1.1
 Factors (TPR), § 4.4g
 Factors used by the courts in determining, § 1.1
 Factors used in choosing guardian, Table 12
 Failure to rehabilitate, § 4.3e
 False allegations of child abuse, § 2.6
 Family Relations Division Report, table 1
 Family Violence Coordinating Council, § 2.5
 Father, definition, § 3.2a.1
 Fetal abuse, § 2.7
 Flexibility, table 1
 Foreign country, residence in, table 2
 Forty-eight hours from birth (TPR), Table 16
 Foster parent, § 2.2, Table 14
 Fourteenth Amendment, § 4.1a
 Frequently asked Questions (guardianship), § 3.2
 Fundamental liberty interests, § 4.1
 Fundamental liberty interests, § 4.1
 Grandparent, table 2
 Grounds for divorce, table 2
 Grounds for guardianship, § 3.1
 Grounds for TPR, § 4.3
 Guardian ad litem, § 2.2, § 3.2e
 Guardian of the estate of a minor., § 3.2b
 Guardian of the person of a minor, § 3.2a
 Guardian, removal of, § 2.3
 Guardianship of incompetent person, Table 1
 Guardianship, definition, § 3.4
 Hearing (TPR), § 4.4e
 Housekeeping, table 1.1
 Hypnosis, § 2.8
 Illegitimate child, § 1.1
 immediate removal of, § 2.3
 Indian Child Protection and Family Violence Prevention Act, §§ 2.1 and 2
 In-patient treatment of parent, table 1
 investigations, § 2.2
 Jurisdiction (TPR), § 4.4a
 Jurisdiction of the courts over guardianship, § 3.3
 jurisdiction, Table 9
 Killing of sibling, § 4.3f
 Limited guardian of a mentally retarded person, § 3.2d
 Mandated reporters (child abuse), §§ 2.1 and 2.6
Mashantucket Pequot Tribal Laws, §§ 2.1-3
 Maternal Preference Rule, table 2
 Medical problems of child, table 1
 Mental ill parent, § 4.1d
 Mentally incompetent person, definition, § 4.1e
 Mentally retarded adult, guardian of, § 3.2d
 Misconduct by parent, § 1.6
 Mother, definition, § 3.2a.1
 Motion to open (TPR), § 4.4h
 Motion to set aside, § 4.4h

National Clearinghouse on Child Abuse & Neglect, web address, § 2.0
 Neglected (definition), § 2.0
 Neglected, § 4.3d
 Ninety-six hour hold, § 2.3
 Notice (TPR), § 4.1e, § 4.4d
 Notice (TPR), § 4.4d
 Omission, acts of (TPR), § 4.3b
 Ongoing parent-child relationship, § 4.3c
 Opportunity to be heard (TPR), § 4.1e
 Other states, best interest of the child standard in, table 3
 Out-of-Home Placements Advisory Committee, § 2.5
 parent, table 2
 Parental Immunity Doctrine, § 2.8
 Parenting skills, table 1
 Parties in TPR, § 4.4c
 Petition for TPR, § 4.4b
 Plenary guardian of a mentally retarded person, § 3.2d
 Preference for one parent over another, § 1.2
 Prenatal conduct (TPR), § 4.3c
 Prenatal drug use, § 2.7
 Presumptions re best interest, § 1.2
 Prevention, child abuse, § 2.5
 Probate Court (TPR), §§ 3.3, 4.4a
 Proceedings, § 2.2
 Proof of grounds (TPR), Table 18
Proofs, tables 4-6
 Psychological instability of parent, table 1
 Psychological parent, § 1.3
 Reason effort, § 4.4f
 Reasonable effort to locate, § 4.4f
 Relative, definition, § 4.4c
 Relocation of parent, §§ 1.1 and 1.5
 Remain silent, right to, § 4.1b
 Remaining parent in TPR, Table 13
 Remarriage, § 1.1
 Removal of parent as guardian, § 3.2a.1
 Replacement of guardianship, § 3.7
 reports of, §§ 2.1 and 2.6
 Repressed Memory Syndrome, § 2.8
 Residence of minor, § 3.3
 Rights of a guardian, § 3.4
 Rights of parents in TPR, § 4.1
 School Employee (certified), § 2.1
 Section 1983 claim, § 2.2
 Service (TPR), § 4.4d
 Sexual activities of parent, table 1
 Sexual assault, § 4.3g
 Siblings, table 2
 Stability, table 1
 Stable environment, § 1.1
 Standard of proof (TPR), § 4.1c
 Standards of appellate review, § 4.4j
 Standby guardian, § 3.2a.3
 Standing (TPR), § 4.4c
 Statutory Parent, Table 19
 Stepparent, table 2
 Substance abuse treatment programs, § 2.7
 Superior Court (TPR), § 4.4a
 Superior Court, § 3.3, jurisdiction, Table 9
 Temporary emergency jurisdiction, § 4.3a
 Temporary guardian, § 3.2a.2
 Termination of guardianship, § 3.7
 Testamentary guardian, § 3.2c
 TPR, § 4.4a
 Transfer (TPR), § 4.4a
 Types of guardians, § 3.2
 Unborn child, § 2.7
 Uncared for, § 4.3d
 Visitation, table 1
 Which parent should be awarded custody, table 6
 Who may petition (TPR), Table 20
 Wishes (choice of guardian), §§ 1.4, 3.6
 Witness, § 2.4
 Workers' liability, §§ 2.2-3
 Working mother, table 2